

VERBATIM <sup>1</sup>RECORD OF TRIAL <sup>2</sup>

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

[REDACTED]

(Social Security Number)

PFC/E-3

(Rank)

Headquarters and

Headquarters Company,

United States Army Garrison

(Unit/Command Name)

U.S. Army

(Branch of Service)

Fort Myer, VA 22211

(Station or Ship)

By

GENERALCOURT-MARTIAL

Convened by

Commander

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

on

see below

(Date or Dates of Trial)

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1 Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

2 See inside back cover for instructions as to preparation and arrangement.

1           A.    They are.

2           Q.    And when did you initial the document?

3           A.    Basically I navigated the site, went through the process of

4   creating the document, printed it out and then initialed the document

5   in, like, immediately thereafter.

6           Q.    Okay. Just a couple other things. We've talked about this

7   before, Agent Mander, but do you recognize the hourglass graphic

8   there?

9           A.    That graphic is the logo that I've seen on the WikiLeaks

10   website.

11          ATC[CPT MORROW]:    Thank you, Agent Mander.

12          MJ:   Cross-examination.

13                                **CROSS-EXAMINATION**

14   **Questions by the assistant defense counsel [CPT TOOMAN]:**

15          Q.    Good afternoon, Agent Mander. Now, when you said that you

16   navigated to the website, how did you go about actually finding those

17   Tweets?

18          A.    The -- I believe, just doing a search for some of the

19   keywords in relation to the actual Tweet.

20          Q.    Now, did you do that search on Twitter?

21          A.    No. I believe I did that search on Google.

22          Q.    So you searched on Google, and then from Google you got a

23   link to the Twitter page?

1           A.    Yes.

2           Q.    So you didn't go to the WikiLeaks Twitter page itself to  
3   find those?

4           A.    Well, it's kind of a bad question.  Essentially the  
5   WikiLeaks Twitter account, so it's basically the Twitter website  
6   where WikiLeaks has an account.  I noticed they have like thousands  
7   of messages there, and I actually went there first and started  
8   looking through all the messages and then figured there might be an  
9   easier way to actually try to find those particular messages.

10          Q.    Right.  Let me rephrase.  You didn't actually go to the  
11   WikiLeaks Twitter feed in order to find those Tweets?

12          A.    Well, yes, that's what was on the screen.

13          Q.    The feed -- Would you agree with me, the feed is where you  
14   can see multiple Tweets from WikiLeaks?

15          A.    Okay.  Correct.

16          Q.    And you didn't go to that portion of the WikiLeaks Twitter  
17   page?

18          A.    I did at one point, and I mentioned, they're arranged  
19   chronologically and there was like thousands of them and you have to  
20   get down to the bottom and then it loads more of them.

21          Q.    Right.  So you didn't find the 31 Alpha and 32 Alpha by  
22   going through the Twitter feed?

23          A.    No.  I found it via the Google search.

1 ADC[CPT TOOMAN]: Okay. Thank you.

2 MJ: Redirect.

3 ATC[CPT MORROW]: Just one question, Agent Mander.

4 **REDIRECT EXAMINATION**

5 **Questions by the assistant trial counsel [CPT MORROW]:**

6 Q. What we just observed in the two documents, was that in the  
7 Twitter feed?

8 A. Yes.

9 Q. Was that part of the Twitter -- Was that the WikiLeaks  
10 account?

11 A. Yes.

12 ATC[CPT MORROW]: Thank you.

13 MJ: Go ahead.

14 **RECROSS-EXAMINATION**

15 **Questions by the assistant defense counsel [CPT TOOMAN]:**

16 Q. Agent Mander, I believe you testified that you didn't  
17 actually go through the Twitter feed and find it, correct?

18 A. Okay. The question you're asking is kind of ----

19 Q. Let me rephrase it, Agent Mander.

20 A. Okay.

21 Q. You mentioned that you had the feed, and when we talk about  
22 the feed we're talking about?

23 A. All of the messages.



1 Q. Multiple Tweets. And when you get down to the bottom it  
2 reloads more?

3 A. Right.

4 Q. And you didn't go through and allow that to reload enough  
5 such that you could get to the Tweets that we looked at on the  
6 screen, correct?

7 A. I do not believe I did, no.

8 Q. So you didn't actually go through all of WikiLeaks Tweets  
9 in order to find those?

10 A. No. There was like 20,000 Tweets.

11 Q. Okay. So you just Googled it and then that's what came up?

12 A. I Googled it, it gave me like a link to an address, and  
13 then actually I believe I took that address and I pasted it into my  
14 browser to make sure that I was going to where the link was.

15 ADC[CPT TOOMAN]: Okay. Thank you.

16 MJ: Any final redirect?

17 ATC[CPT MORROW]: No, Your Honor.

18 **EXAMINATION BY THE COURT-MARTIAL**

19 **Questions by the military judge:**

20 Q. Special Agent Mander, I do have a question based on what  
21 you said. You responded to the government that Prosecution Exhibits  
22 31 Alpha and Bravo are in the WikiLeaks Twitter feed. How do you  
23 know that?

1           A.    Is it possible to see the documents again?  Make it easier  
2 to explain.

3           MJ:   Let the record reflect Captain Morrow is showing the  
4 witness Prosecution Exhibits 31 Alpha and 32 Alpha.

5           Q.    So in the URL, which is the web address that takes you to  
6 these messages, the address is  
7 HTTP://Twitter.com\#\WikiLeaks\status, and then there's like a  
8 serial number.  And basically all of the other WikiLeaks Twitter  
9 messages that were in their feed, they use that same convention so  
10 that it's basically just the serial number that changes based on the  
11 specific message.  And therefore I concluded since the beginning  
12 portion of the address is the same, it was just the serial number  
13 that had changed, it's part of the same account on Twitter.

14          MJ:   Any follow-up based on that?

15          ATC[CPT MORROW]:   No, Your Honor.

16          ADC[CPT TOOMAN]:   May I have a moment, Your Honor?

17          MJ:   Yes.

18          ADC[CPT TOOMAN]:   Briefly, Your Honor.

19                               **RECROSS-EXAMINATION**

20   **Questions by the assistant defense counsel [CPT TOOMAN]:**

21          Q.    Now, Agent Mander, the URL that you're talking about,  
22 that's the URL just for that particular Tweet, correct?

23          A.    That is correct.

1           ADC[CPT TOOMAN]:     Thank you.

2           MJ:   All right.   Any further questions from anyone?

3           ATC[CPT MORROW]:    No, Your Honor, I'm going to retrieve the  
4 exhibits.

5           MJ:   All right.   Temporary excusal?

6           ATC[CPT MORROW]:    Temporary, Your Honor.

7   **[The witness was temporarily excused, duly warned, and withdrew from**  
8 **the courtroom.]**

9           MJ:   Are the parties ready to proceed?

10          TC[MAJ FEIN]:   Ma'am, the United States requests a recess in  
11 order to finalize the stipulations for the remainder of the day.

12          MJ:   All right.   And I believe, once again, I held a brief  
13 R.C.M. 802 conference with counsel this morning where they gave me a  
14 head's up that they would be asking for a recess at some point after  
15 Special Agent Mander's testimony.   I believe the recess you all were  
16 talking about was about 90 minutes?

17          CDC[MR. COOMBS]:    Yes, Your Honor.   To be safe though, it may  
18 be good to go ahead and recess until 1430.

19          MJ:   All right.   And after the recess I'm going to be going over  
20 some stipulations of expected testimony with PFC Manning.   Is that  
21 correct?

22          CDC[MR. COOMBS]:    Yes, Your Honor.

1 MJ: And the reason for this recess is to give him time to  
2 digest what's in those stipulations. Is that correct?

3 CDC[MR. COOMBS]: That is correct, Your Honor.

4 MJ: Okay. So you want to reconvene then at 2:30?

5 TC[MAJ FEIN]: Yes, ma'am.

6 MJ: All right. Court is in recess until 1430 or 2:30. The  
7 Court is very concerned that PFC Manning has enough time to go  
8 through and read these stipulations before we have our colloquy,  
9 particularly if they're numerous, so if the defense needs more time  
10 for that, come talk to me.

11 CDC[MR. COOMBS]: Yes, Your Honor.

12 MJ: Court is in recess.

13 **[The court-martial recessed at 1240, 27 June 2013.]**

14 **[The court-martial was called to order at 1443, 27 June 2013.]**

15 MJ: Court is called to order. Let the record reflect all  
16 parties present when the Court last recessed are again present in  
17 court.

18 During the recess I had some questions so I have asked that  
19 Special Agent Mander be recalled and I believe the government will  
20 want to question him first with respect to a new exhibit that the  
21 government wishes to enter into -- to introduce.

22 TC[MAJ FEIN]: Yes, ma'am.

1 MJ: All right. So why don't we go ahead and do it that way.  
2 Is there anything we need to address before we call Special Agent  
3 Mander?

4 TC[MAJ FEIN]: No, ma'am.

5 ADC[CPT TOOMAN]: No, ma'am.

6 MJ: Go ahead and call him.

7 TC[MAJ FEIN]: Ma'am, the United States recalls Special Agent  
8 Mander.

9 Your Honor, I'm retrieving from the court reporter what has  
10 been marked as Prosecution Exhibit 31 Alpha, 31 Bravo, 32 Alpha, 32  
11 Bravo for Identification. I am handing the witness what has been  
12 marked as Prosecution Exhibits 32 Bravo and 31 Bravo for  
13 Identification.

14 **SPECIAL AGENT MARK MANDER, was recalled as a witness for the**  
15 **prosecution, was reminded he was still under oath, and testified as**  
16 **follows:**

17 **DIRECT EXAMINATION**

18 **Questions by the trial counsel [MAJ FEIN]:**

19 Q. Special Agent Mander, do you recognize these two  
20 prosecution exhibits?

21 A. I do.

22 Q. And how do you recognize them?

1           A.    These are screen captures of some Twitter messages from the  
2 WikiLeaks Twitter account from today.

3           Q.    Okay.  And when you say from today, who created these  
4 screen captures?

5           A.    I did.

6           Q.    And when did you create these?

7           A.    Today.

8           Q.    And looking at 31 Bravo first -- actually, permission to  
9 publish 31 Bravo, ma'am.

10          MJ:  Go ahead.

11 **[There was a brief pause while the trial counsel published the**  
12 **exhibit to the Court and the witness.]**

13          Q.    Special Agent Mander, today when you went on to Twitter,  
14 how did you pull up and print this message, or, excuse me, this  
15 Tweet?

16          A.    I did a search for it using the URL from the other  
17 document, the one that we discussed earlier today, and that basically  
18 led me to the Twitter.com website where this message was.

19          Q.    Okay.

20          MJ:  When you're talking about the other document, what are you  
21 talking about?

22          WIT: Exhibit ----

1 TC[MAJ FEIN]: Your Honor, I am handing Special Agent Mander  
2 what's been marked as 32 Alpha and 31 Alpha for Identification.  
3 Q. Agent Mander, please look those over. Which document are  
4 you referencing?  
5 A. Document 31 Alpha.  
6 Q. Okay. When you say the URL, what do you mean?  
7 A. The web address that's at the top of this exhibit.  
8 Q. Okay. Did that web address on top of the exhibit, was it -  
9 - did that exact web address today when you used it pull up this  
10 message?  
11 A. It did.  
12 Q. It did. And which exhibit is that?  
13 A. 31 Bravo.  
14 Q. May I retrieve 31 Bravo from you? That's 31 Alpha.  
15 A. Sorry. 31 Alpha.  
16 Q. 31 Alpha. Okay. And when you printed or when you took a  
17 screenshot of this, where was this from, this image?  
18 A. That was on the computer screen as I was looking at the  
19 Twitter.com website.  
20 Q. Okay. And what account was this associated with?  
21 A. This is the WikiLeaks Twitter account.

1 TC[MAJ FEIN]: Your Honor, I'm retrieving -- or I'm pulling off  
2 31 Bravo and handing it back to the witness. And I am retrieving  
3 from the witness 32 Bravo. Permission to publish, Your Honor.

4 MJ: Go ahead.

5 **[There was a brief pause while the trial counsel published the**  
6 **exhibit to the Court and the witness.]**

7 Q. Special Agent Mander, do you recognize this image?

8 A. I do.

9 Q. And when did you pull this image?

10 A. Today.

11 Q. And how did you pull this image?

12 A. On this particular one I just modified the number at the  
13 end of the address to match the other one from the other document.

14 Q. And which document are you talking about?

15 A. Exhibit 32 Alpha.

16 Q. And when you say modified the address, what do you mean?

17 A. At the end of the URL that takes you to this page, there's  
18 a number, it's a number that's about ten numerals long, so I just  
19 modified it to the previous document, 32 Alpha, and then hit enter,  
20 and it came up.

21 Q. Okay. Why, when you clicked enter on this document and  
22 didn't have to modify the rest of the URL, why did it bring up this  
23 Tweet?



1 A. Because it's associated with the WikiLeaks Twitter account.

2 TC[MAJ FEIN]: Okay. Thank you. Your Honor, I'm retrieving all  
3 of the exhibits in front of the witness, that is 32 Bravo, and 32  
4 Alpha. Thank you, Your Honor.

5 MJ: Cross-examination.

6 ADC[CPT TOOMAN]: Yes, ma'am.

7 TC[MAJ FEIN]: I'm handing back to the court reporter 31 Alpha  
8 and 31 Bravo.

9 ADC[CPT TOOMAN]: Ma'am, I have 32 Alpha and 32 Bravo.

10 MJ: Thank you.

11 ADC[CPT TOOMAN]: Permission to publish, ma'am.

12 MJ: Yes, please.

13 **[There was a brief pause while the assistant defense counsel**  
14 **published the exhibit to the Court and the witness.]**

15 **CROSS-EXAMINATION**

16 **Questions by the assistant defense counsel [CPT TOOMAN]:**

17 Q. 32 Alpha I am publishing. Agent Mander, when you look at  
18 32 Alpha -- well, actually, I'm going to publish 32 Bravo first.  
19 Now, Agent Mander, 32 Bravo is on the screen. Visible on this  
20 exhibit there are a number of pictures here underneath the text of  
21 the Tweet, is that correct?

22 A. They look like photos or graphics, yeah.

1 Q. Okay. I'm removing 32 Bravo and publishing 32 Alpha. Are  
2 those graphics visible on 32 Alpha?

3 A. They are not.

4 Q. So it's possible that what appears to the user can change?

5 A. Yes. I know for a fact that websites change over time.  
6 The administrators of sites can change how information is displayed,  
7 they can change graphics, background colors, things like that.

8 Q. Thank you, Agent Mander.

9 ADC[CPT TOOMAN]: I'm returning the exhibits to the court  
10 reporter. No further questions, ma'am.

11 MJ: Redirect.

12 TC[MAJ FEIN]: Yes, ma'am.

13 **REDIRECT EXAMINATION**

14 **Questions by the trial counsel [MAJ FEIN]:**

15 Q. Special Agent Mander, with those two exhibits, was the text  
16 of the Tweet the same?

17 A. It appeared to be the same, yes.

18 TC[MAJ FEIN]: Thank you.

19 MJ: Special Agent Mander, I have a couple of questions. Could  
20 you hand Special Agent Mander, Major Fein, Exhibits 31 Alpha and 31  
21 Bravo?

22 TC[MAJ FEIN]: Yes, ma'am. I'm handing Special Agent Mander 31  
23 Alpha and 32 Bravo for Identification.

1 MJ: I'm sorry. Hand him one more.

2 TC[MAJ FEIN]: Yes, ma'am.

3 MJ: 31 and 32.

4 TC[MAJ FEIN]: Yes, ma'am. I'm also handing 32 Alpha, ma'am or  
5 32?

6 MJ: No. We're on 31. Just 31 itself. I don't need any 32s.

7 TC[MAJ FEIN]: Yes, ma'am. Your Honor, I'm handing Special Agent  
8 Mander Prosecution Exhibit 31 for Identification.

9 MJ: Actually, what you can do is publish 31 Alpha.

10 TC[MAJ FEIN]: Yes, ma'am. I'm retrieving 31 Alpha from Special  
11 Agent Mander and publishing 31 Alpha.

12 MJ: All right.

13 **EXAMINATION BY THE COURT-MARTIAL**

14 **Questions by the military judge:**

15 Q. Special Agent Mander, just so I make sure I understand what  
16 I think your testimony was, are you testifying today that the  
17 original Tweet in Prosecution Exhibit 31 that you pulled from Google  
18 cache for Identification is the same Tweet that you pulled the other  
19 way, through the Google search and going on the Twitter account for  
20 31A, and then just pulling up the serial number for 30 -- the web  
21 address and the serial number for 31B? Is that ---

22 A. I'm just looking at both of them here.

23 Q. Okay.

1           A.    I mean aside from the absence of the graphics, the content  
2 of the actual message is the same.

3           Q.    And the questions I'm asking you for 31 are they true for  
4 32, too, or do you want to see the exhibit before you answer that  
5 question?

6           A.    No.  I'm confident that it's the same.

7           Q.    Okay.  Did you testify earlier that the web address was --  
8 for the Twitter was HTTP//Twitter.com WikiLeaks status and then the  
9 serial number?

10          A.    No.  I mentioned that there was a pound and an exclamation  
11 point in the address, or at least that's what I had on the top there,  
12 and when I typed that exact same thing today into Google it took me  
13 to these messages.  Now, I don't know if there's been a change on  
14 their website as far as how it resolves, but ----

15          Q.    That was my question really was when I was looking at  
16 Prosecution Exhibit 31 and 31 Alpha, 31 didn't have the pound and  
17 exclamation point, and now I'm looking at 31 Bravo and that doesn't  
18 have it either.

19          A.    Right.  And I also noticed that when you actually go to  
20 this message, at least on a computer that I was using, which was not  
21 my computer, it defaults to HTTPS now, where it didn't in the, when I  
22 did this like a year ago.  So I highly suspect that something's  
23 changed on their website.

1 MJ: From this exhibit here for Prosecution Exhibit 31B, to  
2 retrieve that, what exactly did you put into the computer?

3 A. Can I see the other sets of exhibits?

4 TC[MAJ FEIN]: Your Honor, I'm retrieving and handing to Special  
5 Agent Mander Prosecution Exhibits 32 Alpha and 32 Bravo for  
6 Identification.

7 A. Okay. So for 32 Bravo, to get to that location I typed in  
8 the full address that's listed on the top of Exhibit 32 Alpha with  
9 the pound and the exclamation point in it to Google and it found  
10 this. When I say this, 32 Bravo, that message. And then I went to  
11 that message via the link in Google. And for 31 Bravo, essentially I  
12 just modified the number at the back of the address to fit the, and I  
13 don't have that exhibit here, but to fit the exhibit for 31 Alpha,  
14 and that also brought up the second message.

15 Q. Do you know why that pound exclamation point is in 31 Alpha  
16 but not 31 Bravo?

17 A. I don't have 31 Alpha here, but no.

18 MJ: Any follow-up based on that from either side?

19 TC[MAJ FEIN]: Yes, Your Honor.

20 **REDIRECT EXAMINATION**

21 **Questions by the trial counsel [MAJ FEIN]:**

22 Q. Special Agent Mander, on the screen, is that published 31  
23 Alpha at the bottom of the corner?

1 A. Yes.

2 Q. And today, when you pulled, when you took a screenshot,  
3 Special Agent Mander, what website were you on when you took that  
4 screenshot?

5 A. Twitter.com.

6 Q. And if you could look at, I'm retrieving from the witness  
7 31 -- Prosecution Exhibit 31 for Identification, I'm handing back to  
8 the witness Prosecution Exhibit 31 for Identification. When you  
9 pulled from the Google cache that Tweet, did that resolve back to  
10 Twitter?

11 A. It's a -- It's a version of the Twitter message that is  
12 cached by Google.

13 Q. So did that resolve back to Twitter?

14 A. Not as far as I know, no.

15 Q. And then for the one you pulled today, was that from the  
16 Twitter website?

17 A. Yes.

18 Q. And was the content the same to what was on Google cache  
19 and what's on the Twitter website?

20 A. The message is the same, yes.

21 Q. And is that true also for Prosecution Exhibit 32 for  
22 Identification?

23 A. Yes.

1 Q. And its subsequent 32 Bravo for Identification?

2 A. Yes.

3 TC[MAJ FEIN]: Thank you. Your Honor, I'm retrieving from  
4 Special Agent Mander Prosecution Exhibit 32 Bravo for Identification,  
5 32 Alpha for Identification and Prosecution Exhibit 3 for  
6 Identification and 31 Bravo for Identification.

7 MJ: Cross-examination.

8 TC[MAJ FEIN]: Pulling off the screen 31 Alpha for  
9 Identification.

10 ADC[CPT TOOMAN]: Thank you, ma'am.

11 **RECROSS-EXAMINATION**

12 **Questions by the assistant defense counsel [CPT TOOMAN]:**

13 Q. Now, Agent Mander, when you created the screenshots for 31  
14 Bravo and 32 Bravo, you typed in the same web address from 31 Alpha  
15 and 32 Alpha, correct?

16 A. Can I see all the exhibits again?

17 Q. Sure. I'll retrieve those from the court reporter.  
18 Handing the witness 31 Alpha.

19 A. 31 Alpha.

20 ADC[CPT TOOMAN]: And 31 Bravo. Now, I'm going to publish 31  
21 Alpha. If I may, ma'am?

22 MJ: Go ahead.

1 Q. Now, when you created 32 -- I'm sorry, 31 Bravo, if I  
2 understand you correctly, you typed in the URL that appears at the  
3 top of this exhibit. Is that correct? So this URL that appears on  
4 31 Alpha, that's what you typed into the computer today to create  
5 Bravo?

6 A. No. What I said was the address at the top of the exhibit  
7 that's on the screen right now, I typed that into Google. That took  
8 me to the address that is on this exhibit.

9 Q. Okay. So did you do a Google search or did you just type  
10 it in your web browser?

11 A. No. I did a search. If I can correct myself here, it was  
12 the other exhibit, 32 Alpha and 32 Bravo, that I had completed the  
13 Google search to get to the message.

14 Q. Okay. So 32 Alpha and 32 Bravo you did a Google search for  
15 the URL at the top of 32 Alpha?

16 A. Yes.

17 Q. And then you clicked on this top search result, I imagine?

18 A. It was the most appropriate one; I don't recall if it was  
19 the top one.

20 Q. So you clicked on the result, that took you to 32 Bravo?

21 A. Yes. Which is the Twitter.com website.

22 Q. And once you were on 32 Bravo, you just changed the end  
23 portion, number, the numeric portion of the URL to get to 32 Alpha?





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1 that are ordered chronologically versus an actual message, if that  
2 helps.

3 Q. So, what do you mean -- So when you answered yes to the  
4 defense, what did you mean by the feed?

5 A. He asked me if I had been to the feed, scrolled through it  
6 to find that message. And I said that I had been to the feed, I had  
7 scrolled through it, but that message was so old that it was no  
8 longer in that feed.

9 Q. And what were your observations about the messages in the  
10 feed currently on the screen in that feed?

11 A. They were other messages from the WikiLeaks Twitter  
12 account.

13 Q. But could you keep scrolling eventually and get to them  
14 all?

15 A. No.

16 Q. So did it stop, did it ----

17 A. Yes.

18 Q. What happened when you did that?

19 A. I scrolled and scrolled and at the bottom it gets to a  
20 point, I think it was 29 March of this year, where it doesn't let you  
21 go any further.

22 Q. Okay. But you still were able to access the messages?

23 A. Yes. It's still on the Twitter.com website.

1 Q. And is it still associated with the WikiLeaks Twitter  
2 account?

3 A. It is.

4 Q. And what does it mean when a web page redirects you to  
5 another web page?

6 A. I'm sorry. What does it mean?

7 Q. Earlier you testified about Google redirecting you when you  
8 typed in the Google search. What does it mean to redirect?

9 A. It's just the process of when a user clicks on an element  
10 on a web page, the web page automatically forwards you to another  
11 location on the Internet.

12 Q. And when it does that, are you on the original website or  
13 are you now on the new website?

14 A. Typically the new website.

15 Q. And what happened today when you typed in Google search and  
16 hit search and then clicked on that result?

17 A. I went to the Twitter.com website.

18 Q. When you typed in the Twitter.com/#!/, and the rest of that  
19 address, where did the computer take you to, or the web page? Excuse  
20 me.

21 A. Can you rephrase your question?

1 Q. Yes. In your testimony first with the Court's question  
2 when you typed in Google search the Twitter.com#! and the rest of  
3 that address, where did that actually take you, that search result?

4 A. The result took me to the Twitter.com website.

5 TC[MAJ FEIN]: Thank you, Your Honor.

6 MJ: Go ahead.

7 **RE CROSS-EXAMINATION**

8 **Questions by the assistant defense counsel [CPT TOOMAN]:**

9 Q. Now, Agent Mander, have you ever been able to view these  
10 tweets that we've been talking about by going directly to  
11 Twitter.com?

12 A. Yes.

13 Q. Take Google out of it?

14 A. Yes. Today. One of them.

15 Q. Okay. And how did you do that?

16 A. I was on the previous message, the one that we've  
17 discussed, and I changed the address slightly and got to the other  
18 message without having used Google.

19 ADC[CPT TOOMAN]: Okay. Thank you, Agent Mander.

20 MJ: I don't think I have any further questions. Does either  
21 side?

22 TC[MAJ FEIN]: No, ma'am.

23 ADC[CPT TOOMAN]: No, ma'am.

1 MJ: All right. Temporary excusal?

2 TC[MAJ FEIN]: Yes, ma'am.

3 **[The witness was temporarily excused, reminded of his previous**

4 **warning, and withdrew from the courtroom.]**

5 MJ: Are the parties ready to proceed?

6 CDC[MR. COOMBS]: No, Your Honor. What the defense would ask

7 is that we reconvene at 1615 or 4:15.

8 MJ: All right. Then is this once again for the purpose of

9 going over the stipulations of expected testimony with PFC Manning?

10 CDC[MR. COOMBS]: Yes, Your Honor.

11 MJ: Any objection?

12 TC[MAJ FEIN]: No, ma'am.

13 MJ: Court is in recess until 1615.

14 **[The court-martial recessed at 1507, 27 June 2013.]**

15 **[The court-martial was called to order at 1636, 27 June 2013.]**

16 MJ: Court is called to order. Major Fein, please account for

17 parties.

18 TC[MAJ FEIN]: Yes, ma'am. All parties in the Court last

19 recessed are again present with the following exceptions: Captain

20 Morrow is absent. Captain Katherine Mitroka is present.

21 MJ: All right. Is this Captain Mitroka's first appearance

22 before the Court?

23 TC[MAJ FEIN]: It is, Your Honor.

1 MJ: And is she qualified and certified?

2 ATC[CPT MITROKA]: I'm prepared to qualify my credentials on the  
3 record at this time, Your Honor.

4 MJ: Go ahead. You can do it from there.

5 ATC[CPT MITROKA]: Your Honor, I, Captain Katherine Mitroka,  
6 have been detailed to this court-martial by the Staff Judge Advocate,  
7 Colonel Corey Bradley, United States Army, Military District of  
8 Washington. I am qualified, I am certified under Article 27 Bravo  
9 and sworn under Article 42 Alpha Uniform Code of Military Justice. I  
10 have not acted in any manner that might disqualify me from this  
11 court-martial.

12 MJ: All right. Thank you. During the recess I was provided  
13 with a number of stipulations of expected testimony that I need to go  
14 over with PFC Manning. Do we have any administrative issues that we  
15 need to address before we go over those?

16 TC[MAJ FEIN]: No, ma'am.

17 ADC[MAJ HURLEY] Ma'am, may PFC Manning and I move to the  
18 witness stand?

19 MJ: Will he have copies of both the redacted and classified  
20 versions of the stipulations?

21 ADC[MAJ HURLEY] Yes, ma'am, he will once we move.

22 MJ: Let the record reflect that Major Hurley and PFC Manning  
23 are moving over to the panel box. All right. PFC Manning, I

1 understand that you and I have the exhibits in the same order, so if  
2 I start saying numbers and names that aren't appearing before you,  
3 let me know.

4 ACC: Yes, ma'am.

5 MJ: Are you ready?

6 ACC: Yes, ma'am.

7 MJ: All right. I have Stipulations of Expected Testimony from  
8 PDAS John Feeley at Prosecution Exhibit 169A for the redacted version  
9 and 169B for the classified version. Stipulation of Expected  
10 Testimony of DAS James Moore which is Prosecution Exhibit 170 Alpha,  
11 the classified version would be 170 Bravo. Stipulation of Expected  
12 Testimony from Ambassador David Pearce, Prosecution Exhibit 171 Alpha  
13 for Identification; classified version 171 Bravo. Stipulation of  
14 Expected Testimony from PDAS H. Dean Pittman which is Prosecution  
15 Exhibit 172 A for Identification; classified version, 172 B for  
16 Identification. Stipulation of Expected Testimony, charged cables,  
17 Ambassador Stephen Seche, which is Prosecution Exhibit 173 Alpha for  
18 Identification; classified version being 173 Bravo for  
19 Identification.

20 ADC[MAJ HURLEY] Ma'am, can we have one second?

21 MJ: Yes.

22 ADC[MAJ HURLEY] Ma'am, if you resume at 174. We're fine.



1 MJ: All the names that I've stated you've got a copy of both  
2 the classified and redacted version, right?

3 ADC[MAJ HURLEY] Yes, ma'am.

4 ACC: Yes, ma'am.

5 MJ: So now we're at the second Prosecution Exhibit that is a  
6 Stipulation of Expected Testimony for the same witness as the last  
7 one, Ambassador Stephen Seche, for uncharged cables, and that would  
8 be the redacted version at 174 Alpha, and the classified version at  
9 174 Bravo. Stipulation of Expected Testimony from Don Yamamoto,  
10 Prosecution Exhibit 175 Alpha for Identification, and the classified  
11 version would be at 175 Bravo for Identification. Stipulation of  
12 Expected Testimony for Ambassador Marie Yovanovitch, Prosecution  
13 Exhibit 176 Alpha for Identification; classified version at 176 Bravo  
14 for Identification. Stipulation of Expected Testimony, AA/S Joseph  
15 Yun, Prosecution Exhibit 177 Alpha for Identification; classified  
16 version at 177 Bravo. And lastly, Stipulation of Expected Testimony  
17 from Mr. Nicholas Murphy, Prosecution Exhibit 178 for  
18 Identification, and there's no classified version for this exhibit.  
19 Is that correct?

20 ACC: Yes, Your Honor.

21 ADC[MAJ HURLEY]: Ma'am, may I have just a moment?

22 MJ: Yes.

1           ADC[MAJ HURLEY]:     Ma'am, you had Mr. Murphy's Stipulation of  
2   Expected Testimony at 178.   Is that correct?

3           MJ:   Yes.   All right.   PFC Manning, this is a pretty substantial  
4   stack of stipulations of expected testimony.   Have you had enough  
5   time to go over them?

6           ACC: Yes, Your Honor.

7           MJ:   Have you had enough time to talk to your defense counsel  
8   about them?

9           ACC: Yes, Your Honor.

10          MJ:   Now, before signing each of these stipulations, both  
11   classified and redacted, did you read over them?

12          ACC: Yes, Your Honor.

13          MJ:   Do you understand the contents of the classified and  
14   unclassified stipulations?

15          ACC: Yes, Your Honor.

16          MJ:   Do you agree with the contents of the stipulations?

17          ACC: Yes, Your Honor.

18          MJ:   Before signing the stip -- each of these stipulations did  
19   your defense counsel explain it to you?

20          ACC: Yes, Your Honor.

21          MJ:   Do you understand that you have an absolute right to refuse  
22   to stipulate to the contents of any of these stipulations of expected  
23   testimony that we just went over?

1 ACC: Yes, Your Honor.

2 MJ: Do you understand that you should enter into each of these  
3 stipulations if you believe only if it's in your best interest to do  
4 that?

5 ACC: Yes, ma'am.

6 MJ: Once again, these are stipulations of expected testimony.  
7 When counsel for both sides and you agree to stipulations of  
8 expected testimony you're agreeing that if each of these witnesses  
9 were here testifying in court they would say substantially what's in  
10 the stipulation of expected testimony. The stipulation does not  
11 admit the truth of the testimony. The stipulation could be  
12 contradicted, attacked or explained in the same way as if the person  
13 was testifying here in person. Do you understand that?

14 ACC: Yes, ma'am.

15 MJ: And knowing everything that I've told you and what your  
16 defense team has told you, do you still want to enter into each of  
17 these stipulations of expected testimony?

18 ACC: Yes, Your Honor.

19 MJ: Do counsel for both sides concur in the contents of each of  
20 these stipulations?

21 TC[MAJ FEIN]: Ma'am, may the government have one moment?

22 MJ: Yes.

1 TC[MAJ FEIN]: Ma'am, the United States does agree, but we  
2 realize administratively the originals are not signed by the  
3 government counsel, but the government counsel will do so afterwards,  
4 may it please the Court.

5 MJ: All right. So the government counsel still has to sign the  
6 original stipulations?

7 TC[MAJ FEIN]: Yes, ma'am. But the United States does agree  
8 that all of those stipulations are, in fact, stipulations that the  
9 government is agreeing to.

10 MJ: Well, take about 5 minutes to sign them.

11 TC[MAJ FEIN]: Maybe even less than that, ma'am.

12 MJ: Let's go ahead and do it.

13 TC[MAJ FEIN]: Yes, ma'am.

14 **[There was a brief pause while the government signed the original**  
15 **stipulations of expected testimony.]**

16 MJ: Oh, I see. You need to sign the classified versions.  
17 Don't worry about it. We'll do it on the recess. So both counsel  
18 agree to the content of the stipulations?

19 TC[MAJ FEIN]: Yes, ma'am.

20 ADC[MAJ HURLEY]: Yes, ma'am.

21 MJ: Now, are these stipulations going to have enclosures or are  
22 there separate exhibits that go with each of them?

1 TC[MAJ FEIN]: Separate exhibits, ma'am, that are referenced by  
2 the stipulations themselves.

3 MJ: Okay. And I believe you were going to set forth for the  
4 record how you intend to do that before we get started?

5 TC[MAJ FEIN]: Yes, ma'am. Your Honor, yesterday during session  
6 the United States read on to the record prosecution or a Stipulation  
7 of Expected Testimony for Mr. Tasha Thian and moved to admit  
8 Prosecution Exhibit 98, and Prosecution Exhibit 98 were the charged  
9 Department of State cables and they were admitted. What the United  
10 States and defense counsel agreed upon was for these stipulations  
11 where these witnesses are actually referencing the individual cables  
12 that they would be remarked as the corresponding prosecution exhibit  
13 number to the stipulation, but Charlie. So, for example, Your Honor,  
14 the very first stipulation, Prosecution Exhibit 169 Alpha for  
15 Identification, 169 Charlie for Identification are the Department of  
16 State cables that Principal Deputy John Feeley would be testifying  
17 about. So in order to make this easier for the record management of  
18 this record of trial, the United States has burned a digital copy of  
19 what was previously or currently is Prosecution Exhibit 98 and put it  
20 on to a CD, and that CD is ready to be marked and admitted as a  
21 substitute for what has previously been prosecution exhibit.

22 MJ: All right. So for both sides then the parts of Prosecution  
23 Exhibit 98 that's already been admitted is going to be discussed in

1 these various stipulations of expected testimony. We're not talking  
2 about admitting anything else, it's already admitted, is that  
3 correct?

4 TC[MAJ FEIN]: It is correct, Your Honor. It's been admitted,  
5 previously as Prosecution Exhibit 98.

6 MJ: So, it's just taking a different form.

7 ADC[MAJ HURLEY]: Yes, ma'am.

8 MJ: Okay. So is there any objection, do I need to admit all  
9 those new exhibits?

10 TC[MAJ FEIN]: Ma'am, I'm sorry. There is one correction. The  
11 second Ambassador Seche Stipulation for the uncharged cables was not  
12 part of Prosecution Exhibit 98, so that is separate. So that has not  
13 been previously admitted.

14 MJ: Okay. So when you refer to these cables that have been  
15 admitted as Prosecution Exhibit 98, then when you talk about them as  
16 Prosecution Exhibit 169 Bravo, Charlie, et cetera, you're just going  
17 to say we're going to all assume that they have been admitted, they  
18 just have a different name at this point?

19 TC[MAJ FEIN]: Except the two I just mentioned, yes, Your Honor.

20 MJ: Okay. So they're not going to be for identification, they  
21 are going to be ----

22 TC[MAJ FEIN]: Yes, ma'am.

1           ADC[MAJ HURLEY]:     It's the understanding of the defense that  
2 they're going to be admitted as the cables for the review of the  
3 trier of fact all together.

4           MJ:   Okay.   So they're just taking a different form in these  
5 stipulations, we don't have to go through any of the admission  
6 process.

7           ADC[MAJ HURLEY]:     No, ma'am.

8           MJ:   Okay.   So I will also admit the exhibits on, to include  
9 stipulations of expected testimony on a recess.

10          TC[MAJ FEIN]:   Yes, ma'am.

11          MJ:   Okay.   So all of these stipulations of expected testimony,  
12 Prosecution Exhibits 190 -- 169A, 170A, 171A, 172A, 173A, 174A, 175A,  
13 176A, 177A, and all of the classified versions at each of those  
14 numbers at B are admitted, as well as Prosecution Exhibit 178 for  
15 Identification.   Is there anything else we need to address before PFC  
16 Manning returns to the defense table?

17          TC[MAJ FEIN]:   Ma'am, there's only one other, and this goes back  
18 to the one stipulation for Ambassador Seche.   174C -- 174 Charlie was  
19 not originally part of Prosecution Exhibit 198, so the United States  
20 still moves to admit 174 Charlie.

21          ADC[MAJ HURLEY]:     There's no objection, ma'am.

22          MJ:   All right.   174 Charlie is admitted.   Is this something  
23 that I should be signing at the recess?

1 TC[MAJ FEIN]: Yes, Your Honor. It's classified.

2 MJ: Okay. So when we do the signing during a recess, after the  
3 recess let's get together and just make sure that we've got  
4 everything that's supposed to be admitted admitted.

5 TC[MAJ FEIN]: Yes, ma'am.

6 MJ: Anything else we need to address before we send PFC Manning  
7 and Major Hurley back to the defense table and proceed?

8 TC[MAJ FEIN]: No, ma'am.

9 MJ: All right. Go ahead.

10 **[The accused and his defense counsel resumed their seats at the**  
11 **defense table.]**

12 TC[MAJ FEIN]: Ma'am, before reading stips, the United States  
13 also moves to admit what has been marked as Prosecution Exhibit 179  
14 for Identification as Prosecution Exhibit 179. These are the  
15 enclosures of the forensic report of PFC Manning's personal Macintosh  
16 which has been previously been recorded as Defense Exhibit Juliet.

17 MJ: This is 179?

18 TC[MAJ FEIN]: Prosecution Exhibit 179 for Identification, yes,  
19 ma'am.

20 ADC[CPT TOOMAN]: No objection, ma'am.

21 MJ: Prosecution Exhibit 179 is admitted. Do I need to do that  
22 on recess as well?



1 TC[MAJ FEIN]: No, ma'am. It's a CD that the court reporter  
2 has.

3 MJ: All right. Prosecution Exhibit 179 for Identification is  
4 admitted. Now, I believe you talked to me just about Prosecution  
5 Exhibit 174 Charlie. What about Bravo?

6 TC[MAJ FEIN]: Ma'am, 174 Bravo is the classified version of 174  
7 Alpha.

8 MJ: All right. Proceed.

9 ATC[CPT MITROKA]: Ma'am, at this time the United States moves  
10 to publish for the record the stipulations of expect the testimony  
11 just discussed.

12 MJ: Okay.

13 ATC[CPT MITROKA]: To begin with, the Stipulation of Expected  
14 Testimony for PDAS John Feeley dated 27 June 2013; marked as  
15 Prosecution Exhibit 169 Alpha.

16 It is hereby agreed by the Accused, Defense Counsel and  
17 Trial Counsel that if Principal Deputy Assistant Secretary, PDAS,  
18 John Feeley were present to testify during the merits and  
19 presentencing phases of this court-martial, he would testify  
20 substantially as follows:

21 The United States Department of State, DoS, is led by the  
22 Secretary of State. There are six undersecretary offices that work  
23 for the Secretary of State. One of those undersecretaries is for

1 political affairs. The Undersecretary of Political Affairs serves as  
2 the day-to-day manager of overall regional and bilateral policy  
3 issues. The Undersecretary of Political Affairs oversees seven  
4 bureaus which are headed by assistant secretaries. Those bureaus are  
5 African Affairs, European and Eurasian Affairs, East Asian and  
6 Pacific Affairs, Near Eastern Affairs, South and Central Asian  
7 Affairs, Western Hemisphere Affairs, and International Organizations.

8           The assistant secretaries of the geographic bureaus and the  
9 offices advise the undersecretary and guide the operation of the U.S.  
10 diplomatic missions within their regional jurisdiction. Each bureau  
11 has a Principal Deputy Assistant Secretary, PDAS, and several deputy  
12 assistant secretaries. The principal deputy assistant secretary is  
13 the lead deputy assistant secretary, all of which assist in the  
14 development and management of U.S. policy concerning the Bureau. I  
15 am the PDAS in the Bureau of Western Hemisphere Affairs, WHA. I have  
16 been in my current position since May 2012. Before that I was the  
17 Summit of America's Coordinator from February 2012 to April 2010.  
18 From July 2009 to February of 2012 I was the Deputy Chief Mission and  
19 Charge D'Affaires in Mexico. In this position I oversaw the daily  
20 implementation of U.S. policies in Mexico. I managed a team of  
21 interagency multinational partners and implemented the Merida  
22 Initiative, a 1.9 billion dollar security initiative between the U.S.  
23 and Mexico.

1 Over the last 23 years I have held numerous Department of  
2 State positions throughout Central and South America, including the  
3 Director for Central American Affairs from 2006 to 2008; Deputy  
4 Political Counselor and Minister Counselor to Political Affairs in  
5 Mexico from 2001 to 2003; Deputy Director for Caribbean Affairs from  
6 2000 to 2001; Desk Officer in El Salvador from 1996 to 1998; Judicial  
7 and Extradition Affairs Officer in Colombia from 1993 to 1995; and  
8 Vice Consul in the Dominican Republic from 1990 to 1993. I have  
9 spent my entire DoS career in WHA with the exception of 4 years. I  
10 have earned a master's degree in national security policy from the  
11 National War College, and have also graduated from the Georgetown  
12 University School of Foreign Service. Before joining DoS I was a  
13 U.S. Marine Corps Officer Pilot.

14 The Bureau of Western Hemisphere Affairs is responsible for  
15 managing and promoting U.S. interests in the region by supporting  
16 democracy, trade and sustainable economic development and fostering  
17 cooperation on issues such as citizen safety, strengthening  
18 democratic institutions and the rule of law, economic and social  
19 inclusion, energy, and climate change. WHA works with the partners  
20 in the Americas to generate broad-based growth through fair trade and  
21 sound economic policies, to invest in the well-being of people from  
22 all walks of life, and to make democracy serve every citizen more  
23 effectively and justly.

1           The United States is linked to the countries of the Western  
2 Hemisphere by physical proximity, shared values and vast cultural,  
3 commercial and demographic ties. There are compelling national  
4 security interests in the Americas, including current and future  
5 energy markets for the United States and maintaining effective  
6 partnerships to prevent illicit trafficking and terrorist activities.

7           Embassies and consultants communicate what is occurring in  
8 the host nations through many different means. Issuing a cable is an  
9 official communication by the embassy or organization. Typically the  
10 Ambassador or Deputy Chief of Mission, DCM, sign off as the  
11 originator on the cables because they contain the official position  
12 of the embassy or organization. Generally cables are issued to  
13 summarize meetings and note significant events in the host country,  
14 and often contain the analysis and comment of the author. The cables  
15 are issued via the distribution captions, one of which is SIPDIS.  
16 The SIPDIS caption indicates that a cable is approved for SIPRNET  
17 distribution and for access by appropriately cleared individuals  
18 across numerous U.S. Government agencies and departments. Classified  
19 cables containing the SIPDIS caption are available to all users of  
20 SIPRNET and JWICS to share information with interested agencies and  
21 departments and United States government. Originators could limit  
22 distribution to DoS personnel only, STADIS, or even limit  
23 distribution to the receipt -- to the recipient of the document,

1 NODIS. The first cable is 07 Bogota 101. The second cable is 07  
2 Bogota 5118. The third cable is 07 Bridgetown 23. The fourth cable  
3 is 07 Buenos Aires 1341. The fifth cable is 07 Caracas 2346. The  
4 sixth the cable is 07 Caracas 35. The seventh cable is 07 Kingston  
5 25. The eighth cable is 07 La Paz 1949. The ninth cable is 07 Lima  
6 2400. The tenth cable is 07 Panama 1197. The eleventh cable is 07  
7 Panama 1198. The twelfth cable is 07 San Salvador 1375. The  
8 thirteenth cable is 07 San Domingo -- Santo Domingo 28. The  
9 fourteenth cable is 09 Bogota 2873. The fifteenth cable is 09  
10 Brasilia 1112. The sixteenth cable is 09 Brasilia 1113. The  
11 seventeenth cable is 09 Caracas 1168. The eighteenth cable is 09  
12 Lima 1309. The nineteenth cable is 09 Mexico 2658. The twentieth  
13 cable is 09 Santiago 831. The twenty-first cable is 09 Santiago 833.  
14 The twenty-second cable is 09 Santiago 835. The twenty-third cable  
15 is 09 Santo Domingo 1017. The twenty-fourth cable is 09 State 92655.  
16 The twenty-fifth cable is 09 Tegucigalpa 891. The twenty-sixth cable  
17 is 09 Tegucigalpa 892. The twenty-seventh cable is 10 Lima 333.

18 With your permission, ma'am, the next stipulation of  
19 Stipulation of Expected Testimony is DAS James Moore.

20 MJ: Go ahead.

21 ATC[CPT MITROKA]: It is dated 27 June 2013, and marked as  
22 Prosecution Exhibit 170 Alpha.

1           It is hereby agreed by the Accused, Defense Counsel and  
2 Trial Counsel that if Deputy Assistant Secretary, DAS, James Moore  
3 were present to testify during the merit and presentencing phases of  
4 this court-martial, he would testify substantially as follows:

5           The United States Department of State, DoS, is led by the  
6 Secretary of State. There are six undersecretary offices that work  
7 for the Secretary of State. One of those undersecretaries is for  
8 political affairs. The Undersecretary of Political Affairs serves as  
9 the day-to-day manager of overall regional and bilateral policy  
10 issues. The Undersecretary of Political Affairs oversees seven  
11 bureaus which are headed by assistant secretaries. Those bureaus are  
12 African Affairs, European and Eurasian Affairs, East Asian and  
13 Pacific Affairs, Near Eastern Affairs, South and Central Asian  
14 Affairs, Western Hemisphere Affairs, and International Organizations.  
15 The assistant secretaries of the Geographic Bureaus and Offices  
16 advise the Undersecretary and guide the operation of U.S. diplomatic  
17 missions within their regional jurisdiction. Each bureau has a  
18 Principal Deputy Assistant Secretary, PDAS, and several Deputy  
19 Assistant Secretaries. The Principal Deputy Assistant Secretary is  
20 the lead Deputy Assistant Secretary, all of which assist the  
21 Assistant Secretary in development and management of U.S. policy  
22 concerning their geographic bureau, including preparing all

1 paperwork, background information, disciplinary issues and policy  
2 directives.

3 I have been with DoS since 1984. I am currently in  
4 training and transitioning to assume the duties as Chief of Mission  
5 to the Dutch Caribbean where I will serve as the Consul General to  
6 Curacao. Prior to this I was the Deputy Assistant Secretary, DAS, of  
7 the Bureau of South and Central Asian Affairs until May 2013. I  
8 oversee all public diplomacy in South and Central Asia including  
9 Fulbright scholars, cultural programs and speaker programs. While  
10 serving as the DAS, I was a part of the WikiLeaks working group.  
11 From 2009 to 2010 I was the Deputy Director and Acting Director of  
12 the Office of Career Development and Assignments in the Bureau of  
13 Human Resources.

14 I was the representative for foreign service assignments.  
15 From 2006 to 2009 I was the Deputy Chief of Mission, DCM, of the U.S.  
16 Embassy in Sri Lanka. I managed the embassy, conducted foreign  
17 relations and promoted the advocacy of U.S. policy. From 2003 to  
18 2006, I was the Minister Counselor for Public Affairs at the Embassy  
19 in Ankara, Turkey. I was the representative for DoS Public Diplomacy  
20 Programs and served as a spokesperson. From 2003 -- excuse me, from  
21 2002 to 2003, I attended the Senior Seminar which is an interagency  
22 process and leadership course. From 1999 to 2002, I served in Quito,  
23 Ecuador as the Public Affairs Officer, and Buenos Aires, Argentina

1 from 1995 to 1999, as the Cultural Affairs Officer. From 1993 to  
2 1994, I worked assignments for South Asian and Near East Affairs,  
3 NEA. From 1990 to 1993, I was the Cultural Affairs Officer in  
4 Chennai, India. From 1988 to 1990, I was the Public Affairs Officer  
5 in Abu Dhabi, United Arab Emirates, UAE. From 1986 to 1988, I was  
6 the Cultural Affairs Officer in Karachi, Pakistan. From 1985 to  
7 1986, I was the Assistant Cultural Affairs Officer in Cairo, Egypt.  
8 I have completed Turkish language training, Arabic language training  
9 and Spanish language training while at DoS. I have a master's degree  
10 in international relations from Georgetown University Foreign Service  
11 School.

12           The mission of the Bureau of South and Central Asian  
13 Affairs is to promote U.S. foreign policy interests, including strong  
14 democratic governments, human rights, development and trade and  
15 investment. The following countries comprise -- excuse me,  
16 comprise the Bureau of South and Central Asian affairs: India,  
17 Bangladesh, Nepal, Sri Lanka, Maldives, Bhutan, Kurdistan,  
18 Kazakhstan, Turkmenistan, Uzbekistan and Tajikistan. The Embassies  
19 communicate what is occurring in the host nations through many  
20 different means. Issuing a cable is an official communication by an  
21 embassy or organization. Typically the Ambassador or Deputy Chief of  
22 Mission, DCM, sign off as the originator on the cables because they  
23 contain the official position of the embassy or organization.



1 Generally, cables are issued to summarize meetings and note  
2 significant events in the host country and often contain the analysis  
3 and comment of the author. The cables are issued via the  
4 distribution captions, one of which is SIPDIS. The SIPDIS caption  
5 indicates that a cable is approved for SIPRNET distribution for  
6 access by appropriately cleared individuals across numerous U.S.  
7 government agencies and departments. Classified cables containing  
8 the SIPDIS caption are available to all users of SIPRNET and JWICS to  
9 share information with interested agencies and departments in the  
10 United States Government. Originators could limit the distribution  
11 of DoS personnel only, STADIS, or even limit distribution to the  
12 recipient of the document, NODIS.

13 The first cable is 06 Colombo 1889. The second cable is 06  
14 Kathmandu 3023. The third cable is 06 Kathmandu 3024. The fourth  
15 cable is 07 Ashghabat 1359. The fifth cable is 07 Docka 24. The  
16 sixth cable is 07 New Delhi 80. The seventh cable is 09 New Delhi  
17 267. The eighth cable is 09 State 92641.

18 With the Court's permission, the next Stipulation of  
19 Expected Testimony is for Ambassador David Pearce.

20 MJ: Go ahead.

21 ATC[CPT MITROKA]: It is dated 27 June 2013, and marked as  
22 Prosecution Exhibit 171 Alpha.

1           It is hereby agreed by the Accused, Defense Counsel and  
2 Trial Counsel that if Ambassador, AMB, David Pearce were present to  
3 testify during the merits and presentencing phases of this court-  
4 martial, he would testify substantially as follows:

5           The United States Department of State, DOS, is led by the  
6 Secretary of State. There are six undersecretary offices that work  
7 for the Secretary of State. One of those undersecretaries is for  
8 political affairs. The Undersecretary of Political Affairs serves as  
9 the day-to-day manager of overall regional and bilateral policy  
10 issues. The Undersecretary of Political Affairs oversees seven  
11 bureaus which are headed by assistant secretaries. Those bureaus are  
12 African Affairs, European and Eurasian Affairs, East Asian and  
13 Pacific Affairs, Near Eastern Affairs, South and Central Asian  
14 Affairs, Western Hemisphere Affairs and International Organizations.

15           The assistant secretaries of the geographic bureaus and  
16 offices advise the undersecretary and guide the operation of U.S.  
17 diplomatic missions within their regional jurisdiction. Each bureau  
18 has a Principal Deputy Assistant Secretary, PDAS, and several Deputy  
19 Assistant Secretaries. The Principal Deputy Assistant Secretary is  
20 the Lead Deputy Assistant Secretary, all of which assists in the  
21 development and management of U.S. policy concerning the Bureau.

22           I am the Principal Deputy, PD, in the Office of the Special  
23 Representative for Afghanistan and Pakistan, S-SRAP. The PD assists

1 the SRAP in advising the Secretary on Afghanistan and Pakistan, and  
2 in providing guidance and direction to our missions in the two  
3 countries. The PD conducts liaison with the Bureau of South and  
4 Central Asian Affairs, SCA, and is double-headed as a Deputy  
5 Assistant Secretary in SCA. I have been in these positions since  
6 July of 2012.

7           S-SRAP supports -- excuse me, reports directly to the  
8 Secretary of State and supervises policy and management for  
9 Afghanistan and Pakistan which includes a substantial amount of  
10 interagency coordination. Prior to my current position I was the  
11 Assistant Chief of Mission, A/COM, at the U.S. Embassy in Kabul from  
12 2011 to July 2012. This is one of the five ambassador level  
13 positions at the Embassy. I supervised the political, military and  
14 public affairs consular legal management and diplomatic security  
15 sections of the Embassy. I have served with the Department of State  
16 since 1982. I began my career with the Department of State as the  
17 Vice Consul and Political Officer in Riyadh, Saudi Arabia. I was the  
18 Liaison Officer to the Kuwaiti Government in exile in Taif, Saudi  
19 Arabia during the Iraqi invasion of Kuwait and the coalition  
20 liberation of Kuwait. Since -- I have since served in senior  
21 positions throughout the Middle East. These positions include the  
22 U.S. Ambassador to the People's Democratic Republic of Algeria from  
23 2008 to 2011; Chief of Mission and Consul General to the United

1 States Consulate General in Jerusalem from 2003 to 2005; Coalition  
2 Provisional Authority in Baghdad in May to June 2003; Deputy --  
3 excuse me, Director of the Department of State's Office in Northern  
4 Gulf Affairs with responsibility for Iraq and Iran from September  
5 2001 to July 2003; Deputy Chief of Mission at the U.S. Embassy in  
6 Damascus from 1997 to 2001; and Consul General in Dubai from 1994 to  
7 1997. I have written the book, *Wary Partners: Diplomats and the*  
8 *Media*. I speak Arabic, French, Italian, and some Farsi. I have  
9 testified in front of Congress on the Afghan elections because of my  
10 experience on Pakistan and Afghanistan.

11           The Embassies communicate what is occurring in the host  
12 nations through many different means. Issuing a cable is an official  
13 communication by the Embassy or organization. Typically the  
14 Ambassador or Deputy Chief of Mission, DCM, sign off as the  
15 originator of the cables because they contain the official position  
16 of Embassy or organization. Generally, cables are issued to  
17 summarize meetings and note significant events in the host country  
18 and often contain the analysis and comment of the author. The cables  
19 are issued via the distribution captions, one of which is SIPDIS.  
20 The SIPDIS caption indicates that a cable is approved for SIPRNET  
21 distribution for access by appropriately cleared individuals across  
22 numerous U.S. Government agencies and departments. Classified cables  
23 containing the SIPDIS caption are available to users of SIPRNET and

1 JWICS to share information with interested agencies and departments  
2 in the United States Government. Originators could limit  
3 distribution to DoS personnel only, STADIS, or even limit  
4 distribution to the addressee of the document, NODIS.

5 The first cable is 99 Islamabad 495. The second cable is  
6 07 Kabul 68. The third cable is 06 Kabul 5420. The fourth cable is  
7 06 Kabul 5421. The fifth cable is 06 Kabul 5435.

8 Thank you.

9 The next Stipulation of Expected Testimony, with your  
10 permission, ma'am, is for PDAS H. Dean Pittman.

11 It is dated 27 June 2013, and marked Prosecution Exhibit  
12 172 Alpha.

13 It is hereby agreed by the Accused, Defense Counsel and  
14 Trial Counsel that if Principal Deputy Assistant Secretary, PDAS, H.  
15 Dean Pittman were present to testify during the merits and  
16 presentencing phases of this court-martial, he would testify  
17 substantially as follows:

18 The United States Department of State, DoS, is led by the  
19 Secretary of State. There are six undersecretary offices that work  
20 for the Secretary of State. One of those undersecretaries is for  
21 political affairs. The Undersecretary of Political Affairs serves as  
22 the day-to-day manager of overall regional and bilateral policy  
23 issues. The Undersecretary of Political affairs oversees seven

1   bureaus which are headed by assistant secretaries. Those bureaus are  
2   African Affairs, European and Eurasian Affairs, Near Eastern Affairs,  
3   South and Central Asian Affairs, East Asian and Pacific Affairs,  
4   Western Hemisphere Affairs and International Organizations. The  
5   assistant secretaries of the geographic bureaus and offices advise  
6   the undersecretary and guide the operation of the U.S. diplomatic  
7   missions within their regional jurisdiction. Each bureau has a  
8   Principal Deputy Assistant Secretary, PDAS, and several Deputy  
9   Assistant Secretaries. The Principal Deputy Assistant Secretary is  
10   the Lead Deputy Assistant Secretary, all of which assist in the  
11   development and management of U.S. policy concerning the bureau. I  
12   am a career member of the foreign service and have been serving as  
13   the PDAS in the Bureau of International Organizations, IO, since  
14   December 2010. I have served from 2009 to 2010 as the Senior  
15   Diplomacy Advisor for the Quadrennial Diplomacy Development and  
16   Review, QDDR. Prior to joining the QDDR team I was a member of the  
17   Secretary of State's Policy Planning Staff where I was responsible  
18   for issues related to Europe and the administration's climate change  
19   agenda. Other domestic assignments include Special Assistant to the  
20   Deputy Secretary of State, 2002 to 2003; Director for the Balkans and  
21   the National Security Council, 2000 to 2002; Legislative Management  
22   Officer for the East Asian and Pacific Region of the Bureau of  
23   Legislative Affairs and Thailand Desk Officer. Overseas I served as

1 the U.S. Consul General to Northern Ireland from 2004 to 2006, and  
2 was assigned to the Coalition Provisional Authority in Iraq as Deputy  
3 Director of the Government's Office from 2003 to 2004. Other  
4 overseas assignments include tours at our Embassies in Sarajevo,  
5 Mozambique, and Guiana and a Detailed Assignment to the Organization  
6 for Security and Cooperation in Europe, OSCE, in Bosnia. Prior to  
7 joining the foreign service I worked on the staff of a U.S.  
8 Congressman for 8 years. I was also a United States Peace Corps  
9 volunteer in Gabon. I hold a master of arts degree from the Johns  
10 Hopkins School of Advanced International Studies, Washington, D.C.,  
11 and a bachelor of arts in political science from Millsaps College in  
12 Jackson, Mississippi.

13 IO is the U.S. Government's primary interlocutor with  
14 United Nations and a host of international agencies and  
15 organizations. As such, the Bureau is charged with advancing the  
16 President's vision of robust multilateral engagement as a crucial  
17 tour in advancing U.S. national interests. U.S. multilateral  
18 engagement spans the full range of important global issues, including  
19 peace and security, nuclear non-proliferation, human rights, economic  
20 development, climate change and much more. The U.S. mission to the  
21 United Nations, USUN, serves as the United States delegation to the  
22 United Nations. USUN is responsible for carrying out the nation's  
23 obligations in the world body. In the United States mission was

1 created by an act of Congress to assist the President and the  
2 Department of State in conducting United States policy at the United  
3 Nations. Since that time USUN has served a vital role in the  
4 Department of State's UN branch. Today USUN has approximately 150  
5 people on staff who serve to represent the United States political,  
6 economic and social, legal, military, public diplomacy, and  
7 management interests in the United Nations.

8           The Embassies communicate what is occurring in the host  
9 nations through many different means. Issuing a cable is an official  
10 communication by the Embassy or organization. Typically the  
11 Ambassador or Deputy Chief of Mission, DCM, sign off as the  
12 originator on the cables because they contain the official position  
13 of the Embassy organization. Generally cables are issued to  
14 summarize meetings and note significant events in the host country  
15 and often contain the analysis and comment of the author. The cables  
16 are issued via the distribution captions, one of which is SIPDIS.  
17 SIPDIS -- the SIPDIS caption indicates that a cable is approved for  
18 SIPRNET distribution for access by appropriately cleared individuals  
19 across numerous U.S. Government agencies and departments. Classified  
20 documents containing the SIPDIS caption are available to all users of  
21 SIPRNET and JWICS to share information with interested agencies and  
22 departments in the United States Government. Originators could limit



1 the distribution to DoS personnel only, STADIS, or even limit the  
2 distribution to the addressee of the document, NODIS.

3 The first cable is 07 USUN New York 573. The second cable  
4 is 07 USUN New York 575. The third cable is 07 USUN New York 578.

5 The next Stipulation of Expected Testimony - Charged Cables  
6 is for Ambassador Stephen Seche, with your permission, ma'am, dated  
7 27 June 2013, and marked as Prosecution Exhibit 173 Alpha.

8 MJ: That's fine.

9 ATC[CPT MITROKA]: It is hereby agreed by the Accused, Defense  
10 Counsel and Trial Counsel that if Ambassador, AMB, Steven Seche were  
11 present to testify during the merits and presentencing phases of this  
12 court-martial, he would testify substantially as follows:

13 The United States Department of State, DoS, is led by the  
14 Secretary of State. There are six undersecretary offices that work  
15 for the Secretary of State. One of those secretaries is for  
16 political affairs. The Undersecretary of Political Affairs serves as  
17 the day-to-day manager of overall regional and bilateral policy  
18 issues. The Undersecretary for Political Affairs oversees seven  
19 bureaus which are headed by assistant secretaries. Those bureaus of  
20 African Affairs, European and Eurasian Affairs, East Asian and  
21 Pacific Affairs, Near Eastern Affairs, South and Central Asian  
22 Affairs, and International Organizations. The assistant secretaries  
23 of the geographic bureaus and offices advise the undersecretary and

1 guide the operation of the U.S. diplomatic missions with their --  
2 within their regional jurisdiction. Each bureau has a Principal  
3 Deputy Assistant Secretary, PDAS, and several Deputy Assistant  
4 Secretaries. The PDAS is the Lead Deputy Assistant Secretary, all of  
5 which assist in the development and management of U.S. policy  
6 concerning the bureau.

7 I recently retired after 35 years of service in the DoS. I  
8 am a career foreign service officer and have spent most of my DoS  
9 career engaged in the practice of public diplomacy. My last position  
10 at the DoS was serving as Deputy Assistant Secretary of State for the  
11 Arabian Gulf in the Bureau of Near Eastern Affairs from August 2011  
12 to May 2013. Before that I served as U.S. Ambassador to Yemen from  
13 August 2007 to August 2010. I spent the intervening year as a  
14 Research Associate at Georgetown University's Institute for the Study  
15 of Diplomacy. During the 2006 to 2007 academic year I was a visiting  
16 fellow at the University of Southern California where I taught in the  
17 recently established master's degree program in public diplomacy.  
18 From February 2005 to August 2006, I served as the Charge D'Affaires  
19 at the U.S. Embassy in Damascus, Syria following the departure of the  
20 Ambassador in the wake of the murder of former Lebanese Prime  
21 Minister Rafic Hariri. Before that I was the Deputy of Chief of  
22 Mission at the U.S. Embassy in Damascus, Syria for 6 months. This  
23 was my second tour in Damascus. From 1999 to 2002, I was Counselor

1 for Public Affairs and Director of the American Cultural Center. I  
2 spent the 2 years between my Damascus assignments as the Director of  
3 Office for Egypt and Levant Affairs at the DoS in Washington, D.C. I  
4 entered the foreign service in 1974 and spent the first 7 years of my  
5 career in public diplomacy positions in Guatemala, Peru and Bolivia.  
6 Other overseas assignments have included 4 years, 1989 to 1993, as  
7 Information Officer at the U.S. Embassy in Ottawa, Canada, and 4  
8 years, 1993 to 1997, as Press Attaché at the U.S. Embassy in New  
9 Delhi, India. Following my service in India I returned to Washington  
10 for the first 2 years of Arabic language training, completing the  
11 program at the Foreign Service Institute Field School in Tunis. I  
12 received my BA from the University of Massachusetts at Amherst and  
13 spent 4 years as a journalist before entering the foreign service.

14         The Bureau of Near Eastern affairs, NEA, deals with U.S.  
15 foreign policy and U.S. diplomatic relations with Algeria, Bahrain,  
16 Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco,  
17 Oman, Palestinian Territories, Qatar, Saudi Arabia, Syria, Tunisia,  
18 United Arab Emirates and Yemen. Regional policy issues that NEA  
19 handles include Iraq Middle East peace process, terrorism and weapons  
20 of mass destruction, and political and economic reform. Key regional  
21 topics include: One, helping Iraqis build a unified, stable and  
22 prosperous country; two, renewing progress toward the two state  
23 solution to the Palestinian-Israeli conflict; three, working against

1 terrorists and their state sponsors as well as against the spread of  
2 weapons of mass destruction; and four, supporting effort at economic  
3 and political reform in the region.

4           The embassies communicate what is occurring in the host  
5 nations through many different means. Issuing a cable is an official  
6 communication by the Embassy or organization. Typically the  
7 Ambassador or Deputy Chief of Mission, DCM, sign off as the  
8 originator on the cables because they contain the official position  
9 of the Embassy or organization. Generally, cables are issued to  
10 summarize meetings and note significant events in the host country  
11 and often contain the analysis and comment of the author. The cables  
12 are issued via the distribution captions, one of which is SIPDIS.  
13 The SIPDIS caption indicates that a cable is approved for SIPRNET  
14 distribution, for access by appropriately cleared individuals across  
15 numerous U.S. Government agencies and departments. Classified cables  
16 containing the SIPDIS caption are available to all users of SIPRNET  
17 and JWICS to share information with interested agencies and  
18 departments in the United States Government. Originators could limit  
19 distribution to DoS personnel only, STADIS, or even limit  
20 distribution to the recipient of the document, NODIS.

21           The first cable is 05 Algiers 1836. The next cable is 06  
22 Algiers 1961. The next cable is 06 Baghdad 2646. The next cable is  
23 06 Baghdad 4205. The next cable is 06 Beirut 3603. The next cable

1 is 06 Beirut 3604. The next cable is 06 Beirut 3703. The next cable  
2 is 06 Kuwait 4430. The next cable is 06 Kuwait 4438. The next cable  
3 is 06 Riyadh 8811. The next cable is 06 Tripoli 645. The next cable  
4 is 06 Tripoli 648. The next cable is 07 Baghdad 35. The next cable  
5 is 07 Baghdad 36. The next cable is 07 Baghdad 37. The next cable  
6 is 07 Baghdad 42. The next cable is 07 Baghdad 53. The next cable  
7 is 07 Baghdad 56. The next cable is 07 Baghdad 63. The next cable  
8 is 07 Baghdad 64. The next cable is 07 Baghdad 70. The next cable  
9 is 07 Basra 3. The next cable is 07 Beirut 1958. The next cable is  
10 07 Riyadh 21. The next cable is 07 Riyadh 22. The next cable is 07  
11 Riyadh 23. The next cable is 07 Tunis 47. The next cable is 08 Oman  
12 535. The next cable is 08 Cairo 569. The next cable is 09 Baghdad  
13 2390. The next cable is 09 Riyadh 1156. The next cable is 10 Rabat  
14 294.

15           The next Stipulation of Expected Testimony - Uncharged  
16 Cables, is also for Ambassador Stephen Seche. It is dated 27 June  
17 2013 and marked Prosecution Exhibit 174 Alpha.

18           It is hereby agreed by the Accused, Defense Counsel, and  
19 Trial Counsel that if Ambassador, AMB, Stephen Seche were present to  
20 testify during the merits and presentencing phases of this court-  
21 martial he would testify substantially as follows:

1           Although not within what was previously marked as PE 173  
2 for ID -- PE 173 Charlie for ID is now PE 173 Charlie or AE 501. I  
3 have reviewed the following cables.

4           The next cable is 09 State 15113. The next cable is 09  
5 Doha 214.

6           The next Stipulation of Expected Testimony, ma'am, is for  
7 Ambassador Don Yamamoto. It is dated 27 June 2013, Prosecution  
8 Exhibit 175 Alpha.

9           It is hereby agreed by the Accused, Defense Counsel, and  
10 Trial Counsel that if Ambassador, AMB, Don Yamamoto were present to  
11 testify during the merits and presentencing phases of this court-  
12 martial, he would testify substantially as follows:

13           The United States Department of State, DoS, is led by the  
14 Secretary of State. There are six undersecretary offices that work  
15 for the Secretary of State. One of those undersecretaries is for  
16 political affairs. The Undersecretary of Political Affairs serves as  
17 the day-to-day manager of overall regional and bilateral policy  
18 issues. The Undersecretary of Political Affairs oversees seven  
19 bureaus which are headed by assistant secretaries. Those bureaus are  
20 African Affairs, European and Eurasian Affairs, East Asian and  
21 Pacific Affairs, Near Eastern Affairs, South and Central Asian  
22 Affairs, Western Hemisphere Affairs and International Organizations.  
23 The assistant secretaries of the geographic bureaus and offices

1 advise the undersecretary and guide the operation of the U.S.  
2 diplomatic missions within their regional jurisdiction. Each bureau  
3 has a Principal Deputy Assistant Secretary, PDAS, and several Deputy  
4 Assistant Secretaries. The Principal Deputy Assistant Secretary is  
5 the Lead Deputy Assistant Secretary, all of which assist in the  
6 development and management of U.S. policy concerning the Bureau. I  
7 am the Acting Assistant Secretary, AA/S, and the PDAS of the Bureau  
8 of African Affairs. I have been the AA/S since 1 April 2013, and  
9 PDAS since 1 August 2009. My prior assignments include serving as  
10 the U.S. Ambassador to the Federal Democratic Republic of Ethiopia  
11 from November 2006 to July 2009. As Ambassador you represent the  
12 United States in the relevant country and advocate the policies of  
13 the United States. I have also served as Deputy Assistant Secretary  
14 of State in the Bureau of African Affairs from 2003 to 2006, where I  
15 was responsible for coordinating U.S. policy towards over 20  
16 countries in East and Central Africa. I have served as U.S.  
17 Ambassador to the Republic of Djibouti from 2000 to 2003, and was the  
18 Deputy Director for East African Affairs from 1998 to 2000. I have  
19 also served in Eritrea as Charge D'Affaires at the U.S. Embassy in  
20 Asmara in the Horn of Africa from 1996 to 1998. I entered the  
21 foreign service in 1980. Additional former assignments include U.S.  
22 Embassy Beijing as Ambassador Staff Aid and Human Rights Officer  
23 during the Tiananmen Square demonstrations in 1989 and Japan as

1 Principal Officer in the Fukuoka Consulate. I attended the National  
2 War College from 1995 to 1996 for senior training and received a  
3 congressional fellowship in 1991. I did graduate studies at Columbia  
4 University receiving a master's degree in international affairs. I  
5 have also studied Chinese, Japanese, Arabic and French. During my  
6 foreign service career I have received 12 Senior Performance Awards,  
7 for Individual Superior Honor -- four Individual Superior Honor  
8 Awards, two group awards, and the 2006 Robert Frasure Memorial Award  
9 for advancing conflict resolution in Africa. I have testified in  
10 front of Congress on numerous occasions to provide expertise in  
11 African affairs.

12           The Bureau of African Affairs is focused on the development  
13 and management of U.S. policy concerning the continent of Africa.  
14 There are five pillars that serve as the foundation of U.S. policy  
15 toward Africa. One. Support for democracy and the strengthening of  
16 democratic institutions on the continent including free, fair and  
17 transparent elections. Two. Supporting African economic growth and  
18 development. Three. Conflict prevention, mitigation and resolution.  
19 Four. Supporting Presidential initiatives such as global health  
20 initiative, feed the future and the global claim at change  
21 initiative. And five. Working with the African nations on  
22 transnational issues such as drug smuggling, money laundering,  
23 illicit arms and trafficking in persons.



1           The Embassies communicate what is occurring in host nations  
2 through many different means. Issuing a cable is an official  
3 communication by the Embassy or organization. Typically the  
4 Ambassador or Deputy Chief of mission, DCM, sign off as the  
5 originator on the cables because they contain the official position  
6 of the Embassy or organization. Generally, cables are issued to  
7 summarize meetings and note significant events in the host country  
8 and often contain the analysis and comment of the author. The cables  
9 are issued via the distribution captions, one of which is SIPDIS.  
10 The SIPDIS caption indicates that a cable is approved for SIPRNET  
11 distribution for access by appropriately cleared individuals across  
12 numerous U.S. Government agencies and departments. Classified cables  
13 containing the SIPDIS caption are available to all users of SIPRNET  
14 and JWICS to share information with interested agencies and  
15 departments in the United States Government. Originators could limit  
16 distribution to DoS personnel only, STADIS, or even limit  
17 distribution to the addressee of the document, NODIS, but this is  
18 rarely done.

19           The first cable is 10 Pretoria 636. The second cable is 8  
20 -- excuse me, is 08 Khartoum 246. The third cable is 08 Khartoum  
21 428. The fourth cable is 07 Lagos 179. The fifth cable is 07 Addis  
22 Ababa 1063. The sixth cable is 07 Addis Ababa 2197. The seventh

1 cable is 09 Bamako 85. The seventh [sic] cable is 09 -- excuse me,  
2 is 08 Dar es Salaam 206.

3 The next Stipulation of Expected Testimony, Your Honor, is  
4 for Ambassador Marie Yovanovitch. It is dated 27 June 2013, and  
5 marked as Prosecution Exhibit 176 Alpha.

6 It is hereby agreed by the Accused, Defense Counsel and  
7 trial counsel that if Ambassador, AMB, Marie Yovanovitch were present  
8 to testify during the merits and presentencing phases of this court-  
9 martial, she would testify substantially as follows:

10 The United States Department of State, DoS, is led by the  
11 Secretary of State. There are six undersecretary offices that work  
12 for the Secretary of State. One of those undersecretaries is for  
13 political affairs. The Undersecretary of Political Affairs serves as  
14 the day-to-day manager of overall regional and bilateral policy  
15 issues. The Undersecretary of Political Affairs oversees seven  
16 bureaus which are headed by assistant secretaries. Those bureaus are  
17 African Affairs, European and Eurasian Affairs, East Asian and  
18 Pacific Affairs, Near Eastern Affairs, South and Central Asian  
19 Affairs, Western Hemisphere Affairs and International Organizations.  
20 The assistant secretaries of the geographic bureaus and offices  
21 advise the undersecretary and guide the operation of the U.S.  
22 diplomatic missions within their regional jurisdiction. They also  
23 determine and implement policy. Each bureau has a Principal Deputy

1 Assistant Secretary, PDAS, and several Deputy Assistant Secretaries.  
2 The Principal Deputy Assistant Secretary is the Lead DAS of all whom  
3 assist the AS in the development and management of U.S. policy  
4 concerning the Bureau. The DAS' review all paperwork, background  
5 information, disciplinary issues, and policy directives.

6 I am the Acting Assistant Secretary, AA/S, and the PDAS of  
7 the Bureau of European and Eurasian Affairs. I have been the AA/S  
8 for European and Eurasian Affairs since March 2013. I have been the  
9 PDAS for European and Eurasian Affairs since September 2012. Before  
10 that I served as the Bureau's DAS responsible for issues related to  
11 the Nordic, Baltic and Central European countries from June 2011 to  
12 September 2012. From 2008 to 2011, I was the Ambassador to the  
13 Republic of Armenia. An Ambassador is the President's representative  
14 that manages employees and relations with that country. From 2005 to  
15 2008, I was the United States -- excuse me, I was the U.S. Ambassador  
16 to Kurdistan. Before that I was the Executive Assistant for U.S.  
17 Political Affairs from 2004 to 2005. From 2001 to 2002, I was the  
18 Deputy Chief of Mission, DCM, of the U.S. Embassy in Kiev, Ukraine.  
19 In 2000, I attended the Navy War College, NWC. From 1998 to 2000, I  
20 was Deputy Director of the Russia desk. From 1996 to 1998, I worked  
21 in Ottawa at the U.S. Embassy. From 1993 to 1996, I worked at U.S.  
22 Embassy Moscow. From 1992 to 1993, I studied Russian at the Foreign  
23 Service Institute, FSI. From 1991 to 1992, I worked at the Office of

1 European Security Affairs. From 1990 to 1991, I worked in the  
2 operations center which is the nerve center of DoS. From 1998 [sic]  
3 to 1990, I worked at the U.S. Embassy in London. From 1986 to 1988,  
4 I worked at U.S. Embassy Mogadishu. I have been with DoS since 1986.  
5 I have a master's of science from the NWC. I am also a graduate of  
6 Princeton University where I earned a bachelor of arts in history and  
7 Russian studies. I have briefed Congress on European and Eurasian  
8 affairs because of my expertise on European and Eurasian affairs. I  
9 also speak Russian.

10 The Bureau of European and Eurasian affairs develops and  
11 implements U.S. foreign policy in Europe and Eurasia. The Bureau  
12 promotes U.S. interests in the region on issues such as international  
13 security, NATO, coordination with the European Union and other  
14 regional organizations, support for democracy, human rights, civil  
15 society, economic prosperity, counter-terrorism and non-  
16 proliferation. The countries are our oldest allies and they are  
17 platforms for handling issues all over the world.

18 The Embassies communicate what is occurring in the host  
19 nations through many different means. Issuing a cable is an official  
20 communication by the Embassy or organization. Typically the  
21 Ambassador or Deputy Chief of Mission, DCM, sign off as the  
22 originator on the cables because they are in charge of the Embassy or  
23 organization. Generally, cables are issued to summarize meetings and

1 note significant events in the host country, and often contain the  
2 analysis and comment of the author. The cables are issued with  
3 distribution captions that to varying degrees limit who can see them.  
4 One of those captions was SIPDIS. The SIPDIS caption indicated that  
5 a cable was approved for SIPRNET distribution for access by  
6 appropriately cleared individuals. U.S. originators can limit  
7 distribution through other captions such as STADIS which would limit  
8 distribution to DoS personnel only, or limit distribution to the  
9 addressee of the document with a NODIS caption.

10           The first cable is 10 Reykjavik 13. The next cable is 07  
11 Belgrade 1681. The next cable is 06 Madrid 2955. The next cable is  
12 06 Madrid 2956. The next cable is 06 Pristina 947. The next cable  
13 is 06 Pristina 948. The next cable is 07 Ankara 23. The next cable  
14 is 07 Ankara 2468. The next cable is 07 Bratislava 665. The next  
15 cable is 07 Minsk 1024. The next cable is 07 Moscow 5824. The next  
16 cable is 07 Moscow 5825. The next cable is 07 Paris 4722. The next  
17 cable is 07 Paris 4723. The next cable is 07 Reykjavik 203. The  
18 next cable is 07 Vilnius 13. The next cable is 09 Paris 217. The  
19 next cable is 09 Prague 88. The next cable is 09 Pristina 58. The  
20 next cable is 09 State 92632. The next cable is 09 State 92657. The  
21 next cable is 10 Brussels 382. The next cable is 10 Geneva 347.

22           ADC[MAJ HURLEY]:     Ma'am?

23           MJ:    Yes.

1           ADC[MAJ HURLEY]:     Could we request a rereading of one  
2 particular sentence from Paragraph 2, Page 1 of this last  
3 stipulation?

4           MJ:   Yes.   Which one.

5           ADC[MAJ HURLEY]:     It's the paragraph that begins from 2000 --  
6 as it's written on the page, 'from 2001 to 2004'.

7           MJ:   Just that sentence?

8           ADC[MAJ HURLEY]:     Yes, ma'am.

9           ATC[CPT MITROKA]:    From 2001 to 2004, I was the Deputy Chief of  
10 Mission, DCM, of the U.S. Embassy in Kiev, Ukraine.

11          ADC[MAJ HURLEY]:     Thank you, ma'am.   Thank you.

12          MJ:   Okay.

13          ATC[CPT MITROKA]:    The next Stipulation of Expected Testimony  
14 is for AA/S Joseph Yun.   It is dated 27 June 2013.   It is marked  
15 Prosecution Exhibit 177 Alpha.

16                 It is hereby agreed by the Accused, Defense Counsel and  
17 Trial Counsel that if Acting Assistant Secretary, AA/S, Joseph Yun  
18 were present to testify during the merits and presentencing phases of  
19 this court-martial, he would testify substantially as follows:

20                 The United States Department of State, DoS, is led by the  
21 Secretary of State.   There are six undersecretary offices that work  
22 for the Secretary of State.   One of those undersecretaries is for  
23 political affairs.   The Undersecretary of Political Affairs serves as

1 the day-to-day manager of overall regional and bilateral policy  
2 issues. The Undersecretary of Political Affairs oversees seven  
3 bureaus which are headed by assistant secretaries. Those bureaus are  
4 African Affairs, European and Eurasian Affairs, East Asian and  
5 Pacific Affairs, Near Eastern Affairs, South and Central Asian  
6 Affairs, Western Hemisphere Affairs, and International Organizations.  
7 The assistant secretaries of the geographic bureaus and offices  
8 advise the undersecretary and guide the operation of the U.S.  
9 diplomatic missions within their regional jurisdiction. Each bureau  
10 has a Principal Deputy Assistant Secretary, PDAS, and several Deputy  
11 Assistant Secretaries. The Principal Deputy Assistant Secretary is  
12 the Lead Deputy Assistant Secretary, all of which assist in the  
13 development and management of U.S. policy concerning the Bureau.

14 I am the AA/S and the PDAS of the Bureau of East Asian and  
15 Pacific Affairs. The Bureau deals with U.S. foreign policy and U.S.  
16 relations with the countries in the Asian -- excuse me, in the Asia  
17 Pacific region. My previous assignment was as Deputy Assistant  
18 Secretary of the same bureau. I am a career member of the senior  
19 foreign service, class of minister counselor. My overseas  
20 assignments have been in South Korea, Thailand, France, Indonesia and  
21 Hong Kong. Before joining the U.S. foreign service in 1985, I was  
22 Senior Economist for Data Resources, Inc. The Bureau of East Asian  
23 and Pacific Affairs covers approximately 40 posts in 26 countries

1 including Korea, Taiwan, Thailand, Hong Kong, Philippines, Australia  
2 and Japan. The United States' interests in the East Asia Pacific  
3 region include promoting regional stability, fostering democracy and  
4 human rights, encouraging economic prosperity, furthering cooperation  
5 on fighting transnational issues and international crime, and  
6 preventing the proliferation of weapons of mass destruction.

7           The Embassies communicate what is occurring in the host  
8 nations through many different means. Issuing a cable is an official  
9 communication by the Embassy or organization. Typically the  
10 Ambassador or Deputy Chief of Mission, DCM, sign off as the  
11 originator on the cables because they contain the official position  
12 of the Embassy or organization. Generally cables are issued to  
13 summarize meetings and note significant events in the host country  
14 and often contain the analysis and comment of the author. The cables  
15 are issued via the distribution captions, one of which is SIPDIS.  
16 The SIPDIS caption indicates that a cable is approved for SIPRNET  
17 distribution for access by appropriately cleared individuals across  
18 numerous U.S. Government agencies and departments. Classified cables  
19 containing the SIPDIS caption are available to all users of SIPRNET  
20 and JWICS to share information with interested agencies and  
21 departments in the United States Government. Originators could limit  
22 distribution to DoS personnel only, STADIS, or even limit  
23 distribution to the addressee of the document, NODIS.



1           The first cable is 07 Bangkok 111. The next cable is 06  
2 Taipei 3830. The next cable is 07 Kuala Lumpur 40. The next cable  
3 is 07 Rangoon 22. The next cable is 07 Vientiane 12. The next cable  
4 is 06 Seoul 3882. The next cable is 06 Seoul 3885. The next cable  
5 is 06 Suva 489. The next cable is 07 Suva 18. The next cable is 10  
6 Tokyo 627. The next cable is 07 Beijing 152.

7           TC[MAJ FEIN]: Ma'am, the United States requests a comfort  
8 break.

9           MJ: All right. How long would you like?

10          TC[MAJ FEIN]: Fifteen minutes, ma'am.

11          MJ: All right. Court is in recess until 6:00 o'clock or 1800.  
12 **[The court-martial recessed at 1752, 27 June 2013.]**

13 **[The court-martial was called to order at 1813, 27 June 2013.]**

14          MJ: Court called to order. Let the record reflect all parties  
15 present when the Court last recessed are again present in court. Is  
16 the government ready to proceed?

17          TC[MAJ FEIN]: Yes, ma'am.

18          MJ: Before you get started, just for the record, over the  
19 recess I admitted all of the remaining exhibits that were  
20 outstanding. Go ahead.

21          ATC[CPT MITROKA]: Thank you, ma'am. The next Stipulation of  
22 Expected Testimony is for Mr. Nicholas M. Murphy. It is dated 27  
23 June 2013, and marked Prosecution Exhibit 178.

1           It is hereby agreed by the Accused, Defense Counselm and  
2 Trial Counsel that if Senior Advisor for the Office of Information  
3 Programs and Services, Mr. Nicholas M. Murphy, were present to  
4 testify during the merits and presentencing phases of this court-  
5 martial, he would testify substantially as follows:

6           I am currently a Senior Advisor with the Office of  
7 Information Programs and Services (IPS), Bureau of Administration,  
8 Department of State (DoS). In this capacity, I advise on information  
9 access with focuses on the classification and declassification of  
10 information. Since 1996, I have served as the DoS Liaison to the  
11 Interagency Security Classification Appeals Panel (IS CAP) and, since  
12 2005, I have served as the alternate Department of State  
13 Representative to the ISCAP. The ISCAP is the panel established by  
14 Executive Order 12958 to, among other functions, adjudicate the  
15 denial of access to classified information requested under the  
16 mandatory review provisions of the E.O. Prior to this, I served as a  
17 Foreign Service Officer with service in Turkey, Lebanon, Saudi  
18 Arabia, France, and Senegal, as well as multiple postings in  
19 Washington, D.C. I have been an employee of iPS or its predecessor  
20 organizations for 24 years, and have over 45 years of experience in  
21 management of access to national security information, security, and  
22 intelligence, including serving as the State Department  
23 representative on the drafting committees for the Executive Orders

1 (E.O.) on classified national security information (E.O. 12958 and  
2 E.O. 13526), and their implementing directives. I have been involved  
3 in the implementation of the Freedom of Information Act policies in  
4 the Department and have been working with classification and  
5 declassification issues since 1990.

6 I am also an Original Classification Authority (OCA) and  
7 have been an OCA for approximately 23 years. My responsibilities in  
8 that position include the review of Department State information for  
9 classification purposes pursuant to E.O. 13526. Per E.O. 13 526,  
10 Section 1.3, the authority to classify information originally may be  
11 exercised only by an OCA, and must be delegated by the President, the  
12 Vice President, or an agency head or designated official.

13 The information -- excuse me. Information which requires  
14 protection in the interest of the national security of the United  
15 States is designated classified national security information per  
16 E.O. 13526, Classified National Security Information, signed by  
17 President Obama on 29 December 2009, and for information classified  
18 prior to June 27, 2010, according to E.O. 12958 signed by President  
19 Clinton on April 17, 1995, as amended by President George W. Bush on  
20 March 25, 2003. Information is classified in levels commensurate  
21 with the assessment that authorized -- that unauthorized disclosure  
22 could cause the following expected damage to national security: for  
23 exceptionally grave damage to national security-Top Secret; for

1 serious damage to national security-Secret; and for damage to  
2 national security-Confidential.

3           Within the Department of State, classified information is  
4 handled and protected in accordance with: a. E.O. 13526 (and  
5 predecessor orders) on Classified National Security Information; b.  
6 Information Security Oversight Office (ISOO) Implementing Directive,  
7 Classified National Security Information, 32 C.F.R. Parts 2001 and  
8 2003; and c. The 12th volume of the Foreign Affairs Manual (FAM),  
9 section 500, titled Information Security.

10           In total, five categories of classified information, as  
11 identified in E.O. 13526 and its predecessor E.O.'s, were included in  
12 the documents I reviewed. Because the mission of the Department of  
13 State encompasses the conduct of foreign relations of the United  
14 States, the Department-relies primarily upon two classification  
15 categories when protecting national security information, which are  
16 identified in Section 1.4 of E.O. 13526 as 1.4(b) (foreign government  
17 information) and 1.4(d) (foreign relations or foreign activities of  
18 the United States, including confidential sources). Additionally, a  
19 small number of specific documents described below also require  
20 protection under classification categories 1.4(a) (military plans,  
21 weapons systems or operations), 1.4(e) (scientific, technological or  
22 economic matters) and 1.4(g), (vulnerabilities and capabilities of  
23 systems and installations). These classification categories apply to

1 the documents in cases where the subject of the diplomatic discourse  
2 or communication also included a discussion of information related to  
3 these categories. The reason for classification of each cable is  
4 identified below.

5           Classified information should be handled and examined only  
6 under such conditions as are adequate to prevent unauthorized persons  
7 from gaining access. Classified material may not be removed from  
8 designated work areas or moved from information systems, e.g.,  
9 classified databases, computer networks, servers, or computers,  
10 except in the performance of official duties and under special  
11 conditions which provide protection for the classified material.

12           I reviewed the 117 charged Department of State cables, or  
13 telegrams, related to this case. Specifically, I reviewed all of the  
14 cables contained in Appellate Exhibit 501 and with the Bates numbers:  
15 00376954 to 00376959, 00376964 to 00377030, 00377033 to 00377044,  
16 00377049 to 00377098, 00377104 to 00377136, 00377141 to 00377185,  
17 00377188 to 00377365, 00377370 to 00377391, 00377395 to 00377424,  
18 00377499 to 00377572, 00377638 to 00377653, and 00377660 to 00377671.  
19 What has been previously marked as Prosecution Exhibit (PE) for  
20 Identification and now is Prosecution Exhibits 169c, 170c, 171c,  
21 172c, 173c, 174c, 175c, 176c, and 177c, contain all of these  
22 documents. In consultation with the subject matter experts in each

1 of the relevant geographic and functional bureaus, as an OCA, I  
2 determine the following for each charged cable:

3           The 10REYKJAVIK13 telegram is an official telegram from  
4 Embassy Reykjavik, dated January 13th, 2010 to the Department of  
5 State. This telegram is three pages. The telegram was properly  
6 classified CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and  
7 (d) at the time it was generated and remained classified in the first  
8 half of 2010.

9           The 99ISLAMABAD495 telegram is an official telegram from  
10 Embassy Islamabad, dated January 25, 1999 to the Department of State.  
11 This telegram is six pages. The telegram was properly classified  
12 CONFIDENTIAL under E.O. 12958 at the time it was generated and  
13 portions of the telegram remained classified CONFIDENTIAL under E.O.  
14 13526 under Section 1.4 (d) in the first half of 2010.

15           The 05ALGIERS-1836 telegram is an official telegram from  
16 Embassy Algiers, dated August 29, 2005 to the Department of State.  
17 This telegram is six pages. The telegram was properly classified  
18 CONFIDENTIAL under E.O. 12958 at the time it was generated and  
19 portions of the telegram remained classified CONFIDENTIAL under E.O.  
20 13526 under Sections 1.4 (b) and (d) in the first half of 2010.

21           The 06ALGIERS-1961 telegram is an official telegram from  
22 Embassy Algiers, dated November 12, 2006 to the Department of State.  
23 This telegram is six pages. The telegram was properly classified

1 CONFIDENTIAL in part under E.O. 12958 at the time it was generated  
2 and portions of the telegram remained classified CONFIDENTIAL under  
3 E.O. 13526 under Section 1.4 (d) in the first half of 2010.

4 The 06BAGHDAD2646 telegram is an official telegram from  
5 Embassy Baghdad, dated July 24, 2006 to the Department of State.  
6 This telegram is three pages. The telegram was properly classified  
7 SECRET under E.O. 12958 at the time it was generated. The telegram  
8 remained classified SECRET under E.O. 13526 under Section 1.4 (d) in  
9 the first half of 2010.

10 The 06BAGHDAD4205 telegram is an official telegram from  
11 Embassy Baghdad, dated November 10, 2006 to the Department of State.  
12 This telegram is four pages. The telegram was properly classified  
13 CONFIDENTIAL under E.O. 12958 at the time it was generated. The  
14 telegram remained classified CONFIDENTIAL under E.O. 13526 under  
15 Section 1.4 (d) in the first half of 2010.

16 The 06BEIRUT3603 telegram is an official telegram from  
17 Embassy Beirut, dated November 11, 2006 to the Department of State.  
18 This telegram is six pages. The telegram was properly classified  
19 SECRET under E.O. 12958 at the time it was generated. The telegram  
20 remained classified SECRET under E.O. 13526 under Sections 1.4 (b)  
21 and (d) in the first half of 2010.

22 The 06BEIRUT3604 telegram is an official telegram from  
23 Embassy Beirut, dated November 12, 2006 to the Department of State.

1 This telegram is four pages. The telegram was properly classified  
2 SECRET under E.O. 12958 at the time it was generated. The telegram  
3 remained SECRET under E.O. 13526 under Section 1.4 (d) in the first  
4 half of 2010.

5 The BEIRUT3703 [sic] telegram is an official telegram from  
6 Embassy Beirut, dated 27 -- excuse me, dated November 27, 2006 to the  
7 Department of State. This telegram is four pages. Portions of the  
8 telegram were properly classified SECRET under E.O. 12958 at the time  
9 it was generated and portions of the telegram remained properly  
10 classified under -- excuse me, portions of the telegram remain  
11 classified SECRET under E.O. 13526 under Section 1.4 (d) in the first  
12 half of 2010.

13 The 06BELGRADE1681 telegram is an official telegram from  
14 Embassy Belgrade, dated October 17, 2006 to the Department of State.  
15 This telegram is five pages. The telegram was properly classified  
16 CONFIDENTIAL under E.O. 12958 at the time it was generated. The  
17 telegram remained classified CONFIDENTIAL under E.O. 13526 under  
18 Sections 1.4 (b) and (d) in the first half of 2010.

19 The 06COLOMBO1889 telegram is an official telegram from  
20 Embassy Colombo, dated November 10, 2006 to the Department of State.  
21 This telegram is four pages. The telegram was properly classified  
22 CONFIDENTIAL under E.O. 12958 at the time it was generated and



1 portions of the telegram remained classified CONFIDENTIAL under E.O.  
2 13526 under Sections 1.4 (b) and (d) in the first half of 2010.

3           The 06KABUL5420 telegram is an official telegram from  
4 Embassy Kabul, dated November 10, 2006 to the Department of State.  
5 This telegram is three pages. The telegram was properly classified  
6 CONFIDENTIAL in part under E.O. 12958 at the time it was generated  
7 and portions of the telegram remained classified CONFIDENTIAL under  
8 E.O. 13526 under Sections 1.4 (b) and (d) in the first half of 2010.

9           The 06KABUL5421 telegram is an official telegram from  
10 Embassy Kabul, dated November 10, 2006 to the Department of State.  
11 This telegram is seven pages. The telegram was properly classified  
12 CONFIDENTIAL in part under E.O. 12958 at the time it was generated  
13 and portions of the telegram remained classified CONFIDENTIAL under  
14 E.O. 13526 under Sections 1.4 (b) and (d) in the first half of 2010.

15           The 06KABUL5435 telegram is an official telegram from  
16 Embassy Kabul, dated November 12, 2006 to the Department of State.  
17 This telegram is six pages. The telegram was properly classified  
18 CONFIDENTIAL under E.O. 12958 at the time it was generated and  
19 portions of the telegram remained classified CONFIDENTIAL under E.O.  
20 13526 under Sections 1.4 (b) and (d) in the first half of 2010.

21           The 06KATHMANDU3023 telegram is an official telegram from  
22 Embassy Kathmandu, dated November 10, 2006 to the Department of  
23 State. This telegram is five pages. The telegram was properly

1 classified CONFIDENTIAL in part under E.O. 12958 at the time it was  
2 generated and portions of the telegram remained classified  
3 CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d) in the  
4 first half of 2010.

5           The 06KATHMANDU3024 telegram is an official telegram from  
6 Embassy Kathmandu, dated November 10, 2006 to the Department of  
7 State. This telegram is seven pages. The telegram was properly  
8 classified CONFIDENTIAL under E.O. 12958 at the time it was generated  
9 and portions of the telegram remained classified CONFIDENTIAL under  
10 E.O. 13526 under Sections 1.4 (b) and (d) in the first half of 2010.

11           The 06KUWAIT4430 telegram is an official telegram from  
12 Embassy Kuwait, dated November 10, 2006 to the Department of State.  
13 This telegram is five pages. The telegram was properly classified  
14 CONFIDENTIAL in part under E.O. 12958 at the time it was generated  
15 and portions of the telegram remained classified CONFIDENTIAL under  
16 E.O. 13526 under Sections 1.4 (b) and (d) in the first half of 2010.

17           The 06KUWAIT4438 telegram is an official telegram from  
18 Embassy Kuwait, dated November 12, 2006 to the Department of State.  
19 This telegram is five pages. The telegram was properly classified  
20 CONFIDENTIAL in part under E.O. 12958 at the time it was generated  
21 and portions of the telegram remained classified CONFIDENTIAL under  
22 E.O. 13526 under Section 1.4( d) in the first half of 2010.

1           The 06MADRID2955 telegram is an official telegram from  
2 Embassy Madrid, dated November 27, 2006 to the Department of State.  
3 This telegram is three pages. The telegram was properly classified  
4 CONFIDENTIAL under E.O. 12958 at the time it was generated. The  
5 telegram remained classified CONFIDENTIAL under E.O. 13526 under  
6 Sections 1.4 (b) and (d) in the first half of 2010.

7           The 06MADRID2956 telegram is an official telegram from  
8 Embassy Madrid, dated November 27, 2006 to the Department of State.  
9 This telegram is three pages. The telegram was properly classified  
10 CONFIDENTIAL under E.O. 12958 at the time it was generated. The  
11 telegram remained classified CONFIDENTIAL under E.O. 13526 under  
12 Sections 1.4 (b) and (d) in the first half of 2010.

13           The 06PRISTINA947 telegram is an official telegram from US  
14 Office Pristina, dated November 11, 2006 to the Department of State.  
15 This telegram is six pages. The telegram was properly classified  
16 CONFIDENTIAL in part under E.O. 12958 at the time it was generated  
17 and portions of the telegram remained classified CONFIDENTIAL under  
18 E.O. 13526 under Sections 1.4 (b) and (d) in the first half of 2010.

19           The 06PRISTINA948 telegram is an official telegram from US  
20 Office Pristina, dated November 11, 2006 to the Department of State.  
21 This telegram is five pages. The telegram was properly classified  
22 CONFIDENTIAL under E.O. 12958 at the time it was generated and

1 portions of the telegram remained classified CONFIDENTIAL under E.O.  
2 13526 under Sections 1.4 (b) and (d) in the first half of 2010.

3           The 06RIYADH8811 telegram is an official telegram from  
4 Embassy Riyadh, dated November 11, 2006 to the Department of State.  
5 This telegram is six pages. The telegram was properly classified  
6 SECRET under E.O. 12958 at the time it was generated. The telegram  
7 remained classified SECRET under E.O. 13526 under Sections 1.4 (a),  
8 (b) and (d) in the first half of 2010.

9           TC[MAJ FEIN]: Your Honor, may the United States substitute  
10 trial counsel to continue reading the Stipulations?

11           MJ: Any objection?

12           CDC[MR. COOMBS]: No objection.

13           MJ: Yes.

14           TC[MAJ FEIN]: Thank you, ma'am.

15           ATC [CPT OVERGAARD]: I'll give Captain Mitroka's voice a  
16 rest, ma'am.

17           The 06SEOUL3882 telegram is an official telegram from  
18 Embassy Seoul, dated November 10, 2006 to the Department of State.  
19 This telegram is three pages. The telegram was properly classified  
20 SECRET under E.O. 12958 at the time it was generated and portions of  
21 the telegram remained classified SECRET under E.O. 13526 under  
22 Sections 1.4 (b) and (d) in the first half of 2010.

1           The 06 3885 [sic] telegram is an official telegram from  
2 Embassy Seoul, dated November 12, 2006 to the Department of State.  
3 This telegram is five pages. The telegram was properly classified  
4 CONFIDENTIAL under E.O. 12958 at the time it was generated and  
5 portions of the telegram remained classified CONFIDENTIAL under E.O.  
6 13526 under Sections (b) and (d) in the first half of 2010.

7           The 06SUVA489 telegram is an official telegram from Embassy  
8 Suva, dated November 12, 2006 to the Department of State. The  
9 telegram --This telegram is six pages. The telegram was properly  
10 classified CONFIDENTIAL in part under E.O. 12958 at the time it was  
11 generated and portions of the telegram remained classified  
12 CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d) in the  
13 first half of 2010.

14           The 06TAIPEI3830 telegram is a telegram from the American  
15 Institute Taiwan (AIT), Taipei, dated November 12, 2006 to the  
16 Department of State. This telegram is two pages. The telegram was  
17 properly classified SECRET under E.O. 12958 at the time it was  
18 generated and portions of the telegram remained classified SECRET  
19 under E.O. 13526 under Sections 1.4 (b) and (d) in the first half of  
20 2010.

21           The 06TRIPOLI 34 -- or sorry. The 06TRIPOLI645 telegram is  
22 an official telegram from Embassy Tripoli, dated November 10, 2006 to  
23 the Department of State. This telegram is three pages. The telegram

1 was properly classified CONFIDENTIAL in part under E.O. 12958 at the  
2 time it was generated and portions of the telegram remained  
3 classified CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and  
4 (d) in the first half of 2010.

5           The 06TRIPOLI648 telegram is an official telegram from  
6 Embassy Tripoli, dated November 10, 2006 to the Department of State.  
7 This telegram is four pages. The telegram was properly classified  
8 CONFIDENTIAL in part under E.O. 12958 at the time it was generated  
9 and portions of the telegram remained classified CONFIDENTIAL under  
10 E.O. 13526 under Section 1.4(d) in the first half of 2010.

11           The 07ADDISABABA2197 telegram is an official telegram from  
12 Embassy Addis Ababa, dated July 13, 2007 to the Department of State.  
13 This telegram is seven pages. The telegram was properly classified  
14 CONFIDENTIAL in part under E.O. 12958 at the time it was generated  
15 and portions remained classified CONFIDENTIAL under E.O. 13526 under  
16 Section 1.4(d) in the first half of 2010.

17           The 07 ANKARA23 telegram is an official telegram from  
18 Embassy Ankara, dated January 8, 2007 to the Department of State.  
19 This telegram is three pages. The telegram was classified  
20 CONFIDENTIAL under E.O. 12958 at the time it was generated and a  
21 portions of the telegram remains -- remained CONFIDENTIAL under E.O.  
22 13526 under Section 1.4 (d) in the first half of 2010 in the first  
23 half of 2010.

1 MJ: Stop for just a moment. Yes.

2 CDC[MR. COOMBS]: Okay. Your Honor, as far as reading the  
3 rest of this, the defense would suggest that when you leave from  
4 Confidential as far as what the actual cable is classified, the part  
5 under E.O. 12958 down to under E.O. 13526 is the same for every one  
6 of these. So, for that when you are reading it we could just skip  
7 from, 'Confidential under' and then go to the section because that's  
8 the only thing that changes. So, that one portion there for the next  
9 hundred or so.

10 ATC [CPT OVERGAARD]: Some of them are in part and some are  
11 in whole but otherwise they are -- I mean they are virtually the  
12 same.

13 CDC[MR. COOMBS]: If it would aid trial counsel.

14 MJ: All right. Government, I'm going to leave this up to you.  
15 How would you like to do it?

16 TC[MAJ FEIN]: Ma'am, another option also is, is because the  
17 Department of Army is publishing the prosecution exhibits that are  
18 read onto the record, this will be published within the next 24 hours  
19 and we could have copies available for the members of the public to  
20 actually have with them instead of waiting on the website and if the  
21 defense would be willing, we could forego the rest of the reading of  
22 this Stip?

1 CDC[MR. COOMBS]: We would, Your Honor. Actually we would  
2 just recommend picking up on Paragraph 8 on Page 17.

3 MJ: All right. I mean in any ordinary case Stipulations  
4 of Expected Testimony are read into the record. This is not the  
5 ordinary case. This Stipulation is 18 pages long. The defense has  
6 proposed going to Page 17, Paragraph 8. Government, if you have no  
7 objection and both sides are in agreement and there are copies of  
8 Prosecution Exhibit 178 that will be available to any members of the  
9 public after these proceedings, right after these proceedings who  
10 desire to read them, what's the -- how would you proceed to do that?

11 TC[MAJ FEIN]: Ma'am, the United States would offer that we'll  
12 have 10 copies available for members of the public to read while they  
13 are here and then once the Department of Army publishes it in the  
14 next 24 hours there will be of course copies for the entire world to  
15 read and have copies to have with them. So, we'll start processing -  
16 - have copies for everyone to read in the session when it concludes.

17 MJ: All right. As both sides are amenable to that procedure  
18 and the -- both the -- PFC Manning's and the public's right to a  
19 public trial is ensured, the Court will go along with that procedure.

20 Why don't we move then to Paragraph 8 on Page 17?

21 ATC [CPT OVERGAARD]: Yes, ma'am.

22 For each of those 96 cables listed above and classified as  
23 CONFIDENTIAL the following is true:



1 First, all 96 cables were properly marked at the  
2 CONFIDENTIAL classification level.

3 Second, disclosure of the information identified in the 96  
4 cables reasonably could be expected to cause damage to the national  
5 security of the United States. In making this statement regarding  
6 the classification of information in this case, I rely upon my  
7 personal knowledge and experience, the information made available to  
8 me in my official capacity, and the advice and recommendations  
9 received from experts within the geographic and functional bureaus.

10 Third, the 96 cables and the information contained in them  
11 were classified at the CONFIDENTIAL level at the time of their  
12 creation, and remained classified at the CONFIDENTIAL level in the  
13 first half of 2010 and at the time of their disclosure. These cables  
14 were classified pursuant to Section 1.4 of E.O. 13526, or its  
15 predecessor E.O.s, because they contained information that, if  
16 released, could cause damage to national security.

17 For each of those 21 cables listed above and classified as  
18 SECRET the following is true:

19 First, all 21 cables were properly marked at the SECRET  
20 classification level.

21 Second, disclosure of the information identified in the 21  
22 cables reasonably could be expected to cause serious damage to the  
23 national security of the United States. In making this statement

1 regarding the classification of information in this case, I relied  
2 upon my personal knowledge and experience, the information made  
3 available to me in my official capacity, and the advice and  
4 recommendations received from experts within the geographic and  
5 functional bureaus.

6 Third, the 21 cables and the information contained in them  
7 were classified at the SECRET level at the time of their creation,  
8 and remained classified at the SECRET level in the first half of 2010  
9 and at the time of their disclosure. These cables were classified  
10 pursuant to Section 1.4 of E.O. 13526, or its predecessor E.O.s,  
11 because they contained information that, if released, could cause  
12 serious damage to national security.

13 Of the cables I reviewed in the Net-Centric Diplomacy  
14 Database, a portion of them were found to be technically deficient in  
15 terms of marking. That is, they contained no declassification date,  
16 were missing authority, or improperly cited the E.O.s. However, the  
17 presence of technical marking deficiencies does not mean that the  
18 cables were not classified. Moreover, I found that portions of some  
19 of the cables I reviewed were no longer sensitive.

20 MJ: All right. I understand copies are being made.

21 TC[MAJ FEIN]: Yes, ma'am. Just to modify, the United States  
22 would actually probably prefer to have five in the courtroom and have

1 five run over to the media operation center so members of the press  
2 also have copies available.

3 MJ: That's fine. Just for the record, on Page 3 in Paragraph  
4 G, it looks like there's a small typo there on the second sentence,  
5 it says his telegram is six pages. Do you mean this telegram is six  
6 pages?

7 ATC [CPT OVERGAARD]: Yes, ma'am, this telegram is six pages.

8 MJ: Do you want to just amend the original? You don't have to  
9 worry about copies going anywhere, we've said it on the record.  
10 Parties can get through 18 pages with one typo, the Court is  
11 impressed.

12 TC[MAJ FEIN]: Ma'am, I previously retrieved from the court  
13 reporter Prosecution Exhibit 178 and all parties, including the  
14 accused, have initialed next to the line out of this telegram.

15 MJ: All right. Does the government intend to present any  
16 further evidence today?

17 TC[MAJ FEIN]: Yes, ma'am, United States does. May we have a  
18 moment?

19 MJ: Yes.

20 TC[MAJ FEIN]: Ma'am, the United States offers to read on to the  
21 record Prosecution Exhibit 76, Stipulation of Expected Testimony for  
22 Special Agent Troy Bettencourt dated 7 June 2013.

1 MJ: All right. My records indicate I've already gone over this  
2 with PFC Manning.

3 TC[MAJ FEIN]: Yes, ma'am, and it's been admitted.

4 MJ: All right. Thank you. And defense agrees, I see you  
5 nodding your head.

6 ADC[MAJ HURLEY]: Yes, ma'am.

7 MJ: Okay.

8 TC[MAJ FEIN]: Ma'am, it is hereby agreed by the Accused,  
9 Defense Counsel and Trial Counsel, that if Special Agent Troy  
10 Betencourt were present to testify during the merit and presentencing  
11 phases of this court-martial he would testify substantially as  
12 follows:

13 I am a Special Agent for the Special Inspector General for  
14 the Troubled Asset Relief Program (SIGTARP), United States Department  
15 of Treasury. Specifically I work for the Computer Forensic Unit (CFU  
16 SIGTARP). My current job title is Senior Special Agent, SSA, and I  
17 am located in Washington, D.C. As an SSA for the CFU my job  
18 primarily entails providing digital forensic e-discovery support to  
19 SIGTARP's national criminal investigations. I also conduct criminal  
20 investigations of crimes within SIG TARP's investigative purview. I  
21 have served as a special agent for SIG TARP for approximately one and  
22 a half years. From November 2010 to December 2011 I was a special  
23 agent for the U.S. Army Criminal Investigation Command, CID.

1 Specifically I worked for the Computer Crimes Investigation Unit,  
2 (CCIU). I was assigned to the Washington Metro Resident Agency CCIU  
3 and investigated crimes within CCIU's investigative purview with a  
4 focus on the PFC Manning investigation. From June 2007 to November  
5 2010, I was an Administrator with the Punta Gorda Police Department  
6 where I was responsible for accreditation, staff inspections, audits,  
7 administrative management study, personnel, media relations and  
8 forensic imaging, preliminary analysis in cases ranging from  
9 prostitution to homicide. From May 2005 to 2007, I owned and  
10 operated my own business. From October of 2001 to May 2005 I was a  
11 special agent with CCIU. I supervised a team of special agents  
12 responsible for investigating crimes within CCIU's investigative  
13 purview. I was also assigned as the CID Liaison at the U.S. Army  
14 Computer Emergency Response Team (ACERT), and the Joint Task Force  
15 Global Network Operations (JTF-GNO). From February 1999 to September  
16 2001, I was a special agent with the Hawaii Field Office CID where I  
17 served as an Assistant Team Chief of a Drug Suppression Team as well  
18 as an Investigator in a General Crimes Investigative Team and Child  
19 Abuse Sexual Crimes Investigative Team.

20 I earned a masters of public administration, criminal  
21 justice administration from Troy University located in Alabama. I  
22 have had extensive training in evidence collection and handling to  
23 include but not limited to the 17-week Apprentice Agent's Course. In

1 terms of computers and forensic training I've completed multiple  
2 courses over the years. I completed three courses at the Defense  
3 Cyber Investigative Training Academy (DCITA), in Linthicum, Maryland  
4 between the years 2001 and 2011, which covered digital media  
5 collection issues. From 2002 to 2003, I attended two courses in  
6 Guidant Software in Reston, Virginia, the manufacturer of EnCase.  
7 During this time I also completed four courses at Learning Tree  
8 International, which focused on Information Network Security. In  
9 2003, I completed the Federal Law Enforcement Seized Evidence  
10 Recovery Specialist Training Certification in Glynco, Georgia. In  
11 2009 and 2013, I attended two courses conducted by Access Data,  
12 manufacturer of FTK. In 2012, I completed a training certification  
13 course on the use Celebrite Universal Forensic Extraction Device.  
14 These courses all discussed the collection, handling and forensic  
15 analysis of digital evidence.

16 I earned a Department of Defense critical -- excuse me,  
17 Your Honor. I earned a Department of Defense Certified Digital Media  
18 Collector Certificate in 2011 from the Department of Defense  
19 Cybercrimes Center, DC3, which must be renewed every 2 years. I have  
20 not renewed it as I no longer work for the Department of Defense  
21 entity. I earned the Federal Law Enforcement Training Center Seized  
22 Evidence Recovery Specialist Certification in 2003 which did not  
23 require recertification. I earned the Celebrite Universal Forensic

1 Extraction Device (UFED) Certification in 2012 which does not require  
2 recertification. I also earned the following certifications which  
3 have since lapsed: Learning Tree International Security, Network  
4 Security Certified Professional 2003; Guidant Software EnCase  
5 Certified Examiner 2004; Access Data Certified Examiner 2009. In  
6 addition to my training and certifications I have investigated or  
7 supervised more than 100 investigations involving computer crimes and  
8 investigated or supervised between 2 to 300 criminal investigations  
9 unrelated to computer crime.

10 On 30 August 2011, as part of this investigation I  
11 downloaded the, "cable gate", archive from WWW.WikiLeaks.org based on  
12 press reports indicating that all Department of State diplomatic  
13 cables in the possession of WikiLeaks have been posted on the  
14 WikiLeaks website. The archive I collected contained 251,287  
15 purported Department of State diplomatic cables or messages. The  
16 purported cables range in date from 1966 to February 2010. I know  
17 this because I personally reviewed the cable gate archive after  
18 collection. This review of the context of the archive revealed that  
19 no information had been redacted from the files.

20 Your Honor, that is it for stipulations of expected  
21 testimony, although we'll have more for tomorrow. However, before we  
22 recess for the night, may we have a brief maybe in place recess to  
23 check on the copies being made?

1 MJ: Certainly. Why don't we just go ahead, we don't need to  
2 recess in place, just take a quick like 5 minute recess. But before  
3 we do that, it's my intent to provide my ruling tomorrow morning on  
4 the admissibility of Prosecution Exhibits 31 the series, 32 the  
5 series, and Prosecution Exhibits 109 for Identification. Any issues  
6 with that?

7 TC[MAJ FEIN]: No, ma'am.

8 CDC[MR. COOMBS]: No, Your Honor.

9 MJ: Okay. Do you think it will take about 30 seconds to run  
10 out and see where they are?

11 TC[MAJ FEIN]: Ma'am, I think it would take 30 seconds to at  
12 least figure out where they are and then if we need more time we'll  
13 ask.

14 MJ: Why don't you do that?

15 TC[MAJ FEIN]: Yes, ma'am.

16 MJ: We'll stay in place. Court is in recess in place. Feel  
17 free to stretch, move around.

18 **[The court-martial recessed in place at 1853, 27 June 2013.]**

19 **[The court-martial was called to order at 1853, 27 June 2013.]**

20 MJ: Court is called to order. Let the record reflect all  
21 parties present when the Court last recessed are again present in  
22 court.

23 Have the copies been made?



1 TC[MAJ FEIN]: Yes, ma'am. There are two sets of five copies,  
2 one set is already on the way to the media operations center and the  
3 second set are right here in my possession, Your Honor. And the  
4 United States proposes that at the conclusion of this session it be  
5 handed over to the court security officer who will then, if any  
6 members of the public would like to read them, will hand them out and  
7 then they'll be returned to the court security officer.

8 MJ: All right. So the copies will remain here.

9 TC[MAJ FEIN]: Yes, ma'am.

10 MJ: Anything else we need to address before we recess Court  
11 today?

12 TC[MAJ FEIN]: No, ma'am.

13 CDC[MR. COOMBS]: No, Your Honor.

14 MJ: 0930 tomorrow?

15 TC[MAJ FEIN]: Yes, ma'am.

16 CDC[MR. COOMBS]: Yes, Your Honor.

17 MJ: All right. Court is in recess until 0930 tomorrow.

18 **[The court-martial recessed at 1854, 27 June 2013.]**

19 **[END OF PAGE]**

1 [The court-martial was called to order at 0942, 28 June 2013.]

2 MJ: Court is called to order. Major Fein, please account for  
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am. Your Honor, all parties when the  
5 Court last recess are again present with the follow exceptions:  
6 Captain Overgaard and Captain Mitroka are absent. Captain Morrow and  
7 Captain von Elten are present.

8 Also, ma'am, as of this morning's start of the hearing  
9 there are ten members of the media at the media operations center,  
10 one stenographer, there's one member of the media in the courtroom,  
11 11 spectators in the courtroom and currently no one in the overflow  
12 trailer, although it is available.

13 MJ: All right. Are there any housekeeping matters we need to  
14 address before we proceed?

15 TC[MAJ FEIN]: Yes, ma'am, there is one. Yesterday at the  
16 conclusion of the session Prosecution Exhibit 178 was being read on  
17 to the record and then was stopped and made publicly available both  
18 in the courtroom and the media operations center. As of 0900 this  
19 morning, Prosecution Exhibit 178, the Stipulation of Expected  
20 Testimony for Mr. Murphy was published to the Army's FOIA reading  
21 room for the public's access to it.

22 MJ: Thank you. Mr. Coombs.

23 CDC[MR. COOMBS]: Nothing from the defense, Your Honor.

1 MJ: All right. The Court is prepared to rule on the government  
2 motion to admit Prosecution Exhibits 31, 32 and 109 for  
3 Identification.

4 On 10 June 2013, after hearing testimony from Special Agent  
5 Mander, the Court ordered the parties to file briefs on the  
6 admissibility of Prosecution Exhibits 31, 32, and 109 for  
7 Identification. On 15 June 2013, the parties filed briefs the  
8 Government at Appellate Exhibit 567; Defense at Appellate Exhibit  
9 568. On 18 June 2013, the Court heard oral argument from counsel.  
10 On 27 June 2013, the Government recalled SPECIAL AGENT Mander and  
11 offered Prosecution Exhibit 31 Alpha and Bravo and Prosecution  
12 Exhibits 32 Alpha and Bravo for Identification into evidence. The  
13 Court has considered the filings by the parties, evidence presented,  
14 the testimony of Special Agent Mander, and oral argument of counsel.  
15 The Court finds and rules as follows:

16 On 10 June 2013, the Government offered Prosecution  
17 Exhibits 31, 32, and 109 into evidence through the testimony of  
18 Special Agent Mander. On 27 June 2013, the Government offered  
19 Prosecution Exhibits 31 Alpha and Bravo and Prosecution Exhibits 32  
20 Alpha and Bravo into evidence via additional testimony of Special  
21 Agent Mander. The Government offers to authenticate Prosecution  
22 Exhibits 31, 31 Alpha, 31 Bravo, 32, 32 Alpha, and 32 Bravo for  
23 Identification in accordance with M.R.E. 901(b)(1); Testimony of a

1 Witness with knowledge-Special Agent Mander and M.R.E. 901(b)(4);  
2 Distinctive Characteristics and the Like: the appearance, contents,  
3 substance, internal patterns, or other distinctive characteristics of  
4 the item, taken together with all the circumstances. The Government  
5 offers to authenticate Prosecution Exhibit 109 for Identification as  
6 a self-authenticating business record in accordance with M.R.E.  
7 803(6) and M.R.E. 902(11) and in accordance with M.R.E. 901(b)(1);  
8 Testimony of a Witness With Knowledge through the testimony of  
9 Special Agent Mander and the attestation by Mr. Christopher Butler,  
10 Office Manager of archive.org (Appellate Exhibit 567, Enclosure 1).

11 Findings of Fact: Prosecution Exhibits 31, 31A, 31B, 32,  
12 32A, and 32B for Identification.

13 One, Prosecution Exhibits 31 and 32 for Identification are  
14 screen captures from Google Cache, a website that archives past  
15 versions of other websites. In this case, Prosecution Exhibits 31  
16 and 32 for Identification are Google Cache archives of WikiLeaks'  
17 Twitter.com postings. Special Agent Mander is unfamiliar with the  
18 process of how Google cache archives web postings.

19 Two, WikiLeaks has an account on the Twitter website.  
20 Twitter accounts post messages in chronological order with the most  
21 recent on top. All published messages remain on the site  
22 indefinitely. On or about August 2012, Special Agent Mander accessed  
23 the WikiLeaks account on Twitter through a Google search. The

1 WikiLeaks account or "feed" had thousands of messages, making  
2 searches for particular Tweets onerous directly through the WikiLeaks  
3 feed. Special Agent Mander then looked for specific WikiLeaks Tweets  
4 by using search terms on Google. The search terms caused Google to  
5 pull up the Twitter website with the Tweets in Prosecution Exhibits  
6 31 Alpha and Prosecution Exhibit 32 Alpha for Identification.  
7 Prosecution Exhibit 31 Alpha and Prosecution Exhibit 32 Alpha for  
8 Identification are screen captures taken by Special Agent Mander on  
9 or about August 2012, while he was reviewing the WikiLeaks Tweets on  
10 the Twitter website. Special Agent Mander typed in the uniform  
11 research locator (URL) address of each Tweet in a text box in the  
12 screen capture. The URL for PE 31 Alpha for Identification is  
13 <http://www.Twitter.com/#!/wikileaks/status/13570878440>. The URL for  
14 Prosecution Exhibit 32 Alpha for Identification is  
15 <http://www.Twitter.com/#!/wikileaks/status/7530875613>. Special Agent  
16 Mander personally viewed the WikiLeaks Twitter account and the Tweets  
17 on the account have the same web address except for a serial number  
18 unique to each Tweet. Special Agent Mander visited the Twitter page  
19 for WikiLeaks on or about 3 June 2013 and, again, on 27 June 2013.  
20 On 27 June 2013, Special Agent Mander typed in the URL of PE 32 Alpha  
21 in a Google search and retrieved the Twitter website with the Tweet  
22 in Prosecution Exhibit 32B. From the Twitter website, Special Agent  
23 Mander then typed in the URL for Prosecution Exhibit 31 Alpha and

1 retrieved the Tweet in Prosecution Exhibit 31 Bravo. Special Agent  
2 Mander took screen shots of both Twitters -- of both Tweets, excuse  
3 me. Prosecution Exhibit 31B and Prosecution Exhibit 32B have the  
4 same URL as Prosecution Exhibits 31A and B -- and 32A except that  
5 Prosecution Exhibit 31B and Prosecution Exhibit 32B begin the URL  
6 with "https" rather than "http" and they do not have the "/#!/".

7           Nevertheless, a search using the URL for PEs 31A and 32A  
8 for Identification in Google retrieves Prosecution Exhibits 31 Bravo  
9 and 32 Bravo for Identification. Also on 27 June 2013, Special Agent  
10 Mander went directly to the WikiLeaks feed on Twitter to try to find  
11 the Tweets in Prosecution Exhibit 31 and 32 for Identification. The  
12 feed would not let him have access to messages prior to March, 2013.  
13 Special Agent Mander has never viewed the Tweets in Prosecution  
14 Exhibits 31 and 32 for Identification directly from the WikiLeaks  
15 Twitter feed.

16           Three, Prosecution Exhibits 31, 31 Alpha, 31 Bravo, 32, 32  
17 Alpha, and 32 Bravo for Identification have the following distinctive  
18 characteristics attributable to WikiLeaks: The Tweets feature the  
19 WikiLeaks logo; they feature WikiLeaks name as the account name  
20 "WikiLeaks" used on Twitter; the serial numbers the URL are the same  
21 for Prosecution Exhibits 31, 31 Alpha, and 31 Bravo for  
22 Identification; the serial numbers for the URL of Prosecution  
23 Exhibits 32, 32 Alpha, and 32 Bravo are the same; and the contents of

1 the Tweets in the Prosecution Exhibits for Identification 31 series  
2 of exhibits and the Prosecution Exhibit 32 for Identification series  
3 of exhibits relates to the information allegedly compromised by PFC  
4 Manning.

5           Four, the date and time of the Tweets in Prosecution  
6 Exhibits 31, 31 Alpha, and 31 Bravo for Identification are the same  
7 and are actually on the Tweets themselves and not generated from  
8 Google.cache or any other internet archive process. Prosecution  
9 Exhibits 31, 31 Alpha, and 31 Bravo are screen images of the same  
10 Tweet with the WikiLeaks label, logo, text, time/date, and URL serial  
11 number. The same is true for the date and time of the Tweets in  
12 Prosecution Exhibits 32, 32 Alpha, and 32 Bravo for Identification.

13           Prosecution Exhibit 109 for Identification:

14           Prosecution Exhibit 109 for Identification is a screen  
15 capture from archive.org, another website that archives past versions  
16 of websites from across the internet. More specifically, Prosecution  
17 Exhibit 109 for Identification is a web page from archive.org  
18 purporting to show a WikiLeaks.com webpage available on the internet  
19 on 5 November 2009 at 06:13:30.

20           Two, Special Agent Mander has not viewed the original  
21 WikiLeaks.com webpage that the archive.org webpage purports to have  
22 archived as Prosecution Exhibit 109 for Identification. He also has  
23 no personal knowledge of the methods or standards employed by

1 archive.org in creating and maintaining their web pages or with  
2 methods or standards used to capture web pages by third party donors  
3 to archive.org.

4           Three, on 15 June 2013, the parties submitted briefs on the  
5 admissibility of Prosecution Exhibits 31, 32, and 109 for  
6 Identification. As additional evidence to authenticate Prosecution  
7 Exhibit 109 for Identification in accordance with Military Rule of  
8 Evidence 902(11) and Military Rule of Evidence 901 (b)(2), the  
9 Government submitted an Attestation Certificate from Mr. Christopher  
10 Butler, Office Manager of archive.org dated 12 June 2013 (Appellate  
11 Exhibit 567, Enclosure 1). That attestation reads: I swear or  
12 affirm that each of the following is true regarding the attached  
13 records to the best of my knowledge and belief:

14           One, I am an employee familiar with the manner and process  
15 in which these records are created and maintained, by virtue of my  
16 duties and responsibilities;

17           Two, to the best that the electronic systems involved can  
18 accurately record and reflect, such files were captured at or near  
19 the time of the date reflected in the URL assigned to each file by  
20 virtue of an automated transfer of electronic data.

21           Three, such records were captured by Internet Archive or  
22 received from third party donors in the course of regularly conducted  
23 business activity by the Internet Archive;



1           Four, the records are true and accurate copies of the  
2 original documents in Internet Archive's Wayback Machine service at  
3 web.archive.org.

4           The Court notes the attached record to this attestation is  
5 entitled "Draft: The Most Wanted Leaks of 2009-sort" with the same  
6 content and URL as Prosecution Exhibit 109 for Identification.

7           Four, the Defense also submitted an attestation from Mr.  
8 Butler dated 13 June 2013, (Enclosure 10 of the Defense brief -  
9 Appellate Exhibit 568).

10           The attestation reads as follows:

11           One, I am the Office Manager at the Internet Archive,  
12 located in San Francisco, California. I make this declaration of my  
13 own personal knowledge.

14           Two, the Internet Archive is a website that provides access  
15 to a digital library of Internet sites and other cultural artifacts  
16 in digital form. Like a paper library, we provide free access to  
17 researchers, historians, scholars, and the general public. The  
18 Internet Archive has partnered with and receives support from various  
19 institutions, including the Library of Congress.

20           Three, the Internet Archive has created a service known as  
21 the Wayback Machine. The Wayback Machine makes it possible to surf  
22 more than 240 billion pages stored on the Internet Archive's web  
23 archive. Visitors to the Wayback machine can search archives by URL

1 (i.e. a website address). If archived records for a URL are  
2 available, the visitor will be presented with a list of available  
3 dates. The visitor may select one of those dates and then begin  
4 surfing on an archived version of the Web. The links on the archived  
5 files, when saved by the Wayback Machine, point to other archived  
6 files (whether HTML pages or images). If a visitor clicks on a link  
7 on an archived page, the Wayback Machine will serve the archived file  
8 with the closest available date to the page upon which the link  
9 appeared and was clicked.

10 Four, the archived data made viewable and browsable by the  
11 Wayback Machine is compiled using software programs known as  
12 crawlers, which surf the Web and automatically store copies of web  
13 files, preserving these files as they exist at the point of time of  
14 capture.

15 Five, the Internet Archive assigns a URL on its site to the  
16 archived files in the format [http://web.archive.org/web/\[Year in  
17 yyyy\]\[day in dd\]\[Time code in hh:mm:ss\]/\[Archived URL\]](http://web.archive.org/web/[Year in yyyy][day in dd][Time code in hh:mm:ss]/[Archived URL]). Thus, the  
18 Internet Archive URL [http://web.archive.org/web/19970  
19 126045828/http://www.archive.org/](http://web.archive.org/web/19970126126045828/http://www.archive.org/) would be the URL for the record of  
20 the Internet Archive home page HTML file (<http://www.archive.org/>)  
21 archived on January 26, 1997 at 4:58a.m. and 28 seconds (1997/01126  
22 at 04:58:28). A web browser may be set such that a printout from it  
23 will display the URL of a web page in the printout's footer. The

1 date assigned by the Internet Archive applies to the HTML file but  
2 not to image files linked therein. Thus images that appear on a page  
3 may not have been archived on the same date as the HTML file.  
4 Likewise, if a website is designed with "Frames", the date assigned  
5 by the Internet Archive applies to the frameset as a whole, and not  
6 the individual pages within each frame.

7           Six, regarding archived files stored in and made available  
8 via the Wayback Machine, I further declare that:

9           A. To the best that the electronic systems involved can  
10 accurately record and reflect, such files were captured at or near  
11 the time of the date reflected in the URL assigned to each file by  
12 virtue of an automated transfer of electronic data;

13           B. Such records were captured by Internet Archive or  
14 received from third party donors in the course of regularly conducted  
15 activity by the Internet Archive; and

16           C. the Internet Archive captures, stores, and receives from  
17 third party donors web data as a regular practice.

18           Seven, the web archives for the year 2009 in the Wayback  
19 Machine at web.archive.org were largely obtained from third-party  
20 organizations, which donated the archived data, captured by automatic  
21 electronic systems, to the Internet Archive. I do not affirm that  
22 these web archives were set forth by, or from information transmitted  
23 by, people with knowledge of the information recorded therein.

1           Eight, this document is the Internet Archive's standard  
2 affidavit, the affidavit Internet Archive normally provides to  
3 parties seeking to use Wayback Machine records as evidence in legal  
4 proceedings, with additional language provided in paragraphs 6-8.

5           Nine, attached hereto as Exhibit A are true and accurate  
6 copies of printouts of the Internet Archive's records of the HTML  
7 files for the URLs and the dates specified in the footer of the  
8 printout. IO. I declare under penalty of perjury that the foregoing  
9 is true and correct.

10           The Court notes that Exhibit A contains a document entitled  
11 "Draft: The Most Wanted Leaks of 2009" that is similar to Defense  
12 Exhibit Foxtrot but not identical as it contains additions,  
13 deletions, and changes. The URL is:  
14 [http://web.archive.org/web/200911042112937/http://WikiLeaks.org/wiki/](http://web.archive.org/web/200911042112937/http://WikiLeaks.org/wiki/Draft:The_Most_Wanted_Leaks_of_2009)  
15 [Draft:The\\_Most\\_Wanted\\_Leaks\\_of\\_2009](http://web.archive.org/web/200911042112937/http://WikiLeaks.org/wiki/Draft:The_Most_Wanted_Leaks_of_2009). Thus, there are at least 3  
16 versions of "Draft The Most Wanted Leaks of 2009 available on the  
17 Internet today.

18           Hearsay/Relevance. The Court refers to Prosecution  
19 Exhibits 31, 31 Alpha, and 31 Bravo for Identification together as  
20 Prosecution Exhibit 31 for Identification and refers to Prosecution  
21 Exhibits 32, 32 Alpha, and 32 Bravo for Identification as Prosecution  
22 Exhibit 32 for ID for purposes of Hearsay/Relevance findings of fact.  
23 The Prosecution Exhibit 31 and Prosecution Exhibit 32 series of

1 exhibits are the same two Tweets, thus hearsay/relevance findings are  
2 the same for all the exhibits in the series.

3           One, the defense asserts that Prosecution Exhibits 31 and  
4 32 for Identification and Prosecution Exhibit 109 for Identification  
5 are hearsay in that (1) the statement by the webpage or Tweet itself  
6 is hearsay; (2) the statement of the individual who allegedly  
7 captured the site and relayed the information to archive.org or  
8 Google.cache is hearsay; and (3) the statement of archive.org or  
9 Google.cache is hearsay.

10           Two, the Government offers Prosecution Exhibits 31, 32, and  
11 109 for Identification not for the truth of the matters asserted  
12 within the exhibits. Rather, they offering these exhibits to show  
13 the effect that they may have had on PFC Manning. The Government  
14 asserts to the extent the contents of Prosecution Exhibits 31, 32,  
15 and 109 for Identification could have influenced PFC Manning, the  
16 exhibits are relevant. Defense asserts the Government has presented  
17 no evidence that PFC Manning saw or was aware of Prosecution Exhibits  
18 31, 32, or 109 for ID, therefore they are not relevant to any fact of  
19 consequence.

20           Three, the Government theory of the case with respect to  
21 Prosecution Exhibit 109 for Identification is that PFC Manning viewed  
22 the WikiLeaks Most Wanted List directly from the WikiLeaks webpage as  
23 depicted in Prosecution Exhibit 109 for Identification on or after 5

1 November 2009, not that PFC Manning viewed the list as depicted in  
2 Prosecution Exhibit 109 for Identification from the archive.org  
3 website.

4           Four, the Government has presented no forensic evidence  
5 that the Tweets in Prosecution Exhibit 31 and 32 for Identification  
6 or the "Most Wanted List of 2009" in Prosecution Exhibit 109 for  
7 Identification were downloaded by PFC Manning. The Government has  
8 offered evidence that PFC Manning conducted searches for WikiLeaks  
9 and OpenSource.gov on Intelink; evidence of chats between PFC Manning  
10 and Press Association/Julian Assange that discussed OpenSource.gov;  
11 and evidence that when conducting searches on Intelink, when the  
12 searcher pulls up a website and proceeds to search within that  
13 website, Intelink no longer captures the search data.

14           The Law.

15           One, evidence must be relevant to be admissible. M.R.E.  
16 402.

17           Two, evidence is relevant if it has the tendency to make a  
18 fact that is of consequence to the determination of the action more  
19 probable or less probable than it would be without the evidence.  
20 M.R.E. 401(3). Hearsay is a statement, other than one made by the  
21 declarant while testifying at the trial or hearing, offered in  
22 evidence to prove the truth of the matter asserted. M.R.E. 801(c).

1 Four, hearsay evidence is inadmissible unless an exception  
2 applies or the evidence is offered for a purpose other than to prove  
3 the truth of the matter asserted. M.R.E. 802. This rule applies to  
4 testimony given by witnesses at trial and to exhibits to the extent  
5 that exhibits contain statements.

6 Five, statements offered to prove the effects those  
7 statements may have had on a listener, or reader, are not offered to  
8 prove the truth of the matter asserted and, therefore, may be  
9 considered for that limited nonhearsay purpose.

10 Six, exhibits require authentication as a condition  
11 precedent to their admission. The requirement of authentication is  
12 satisfied by evidence sufficient to support a finding that the  
13 exhibit in question is what its proponent claims. M.R.E. 901(a); *U.S.*  
14 *v. Lubich*, 72 M.J. 170 (Court of Appeals for the Armed Forces 2013).

15 Seven, authentication is an issue of conditional relevance.  
16 M.R.E. 104(b) and M.R.E. 1008 govern the inquiry under M.R.E. 901.  
17 Thus, the Court may consider only evidence offered by the proponent  
18 that is admissible at trial to make a preliminary determination  
19 whether the exhibit(s) are sufficiently authenticated for the fact-  
20 finder to make a determination that they are authentic. *Lubich*,  
21 ("M.R.E. 901 is the same as Federal Rule of Evidence 901 and embraces  
22 the well-established view that authentication is a component of  
23 relevancy." And citing *U.S. v. Blanchard*, 48 M.J. 306 at 309 (Court

1 of Appeals for the Armed Forces, 1998) "federal court of appeals  
2 decisions applying these principles would be most helpful.").  
3 Federal Rule of Evidence 901 advisory committee's note "The  
4 requirement of showing authenticity or identity falls in the category  
5 of relevancy dependent upon fulfillment of a condition of fact and is  
6 governed by the procedure set forth in Rule 104(b )." Thus, only  
7 admissible exhibits may be considered by the Court in making its  
8 preliminary determination.

9           Eight, two methods of satisfying the authentication  
10 requirement, and the methods attempted by the Government in moving  
11 for admission of Prosecution Exhibits 31, 31 Alpha, 31 Bravo, 32, 32  
12 Alpha, and 32 Bravo for Identification are:

13           One, through a witness with knowledge that the exhibit is  
14 what it is claimed to be. M.R.E. 901(b)(1); and

15           Two, evidence of distinctive characteristics and the like.  
16 M.R.E. 901(b)(4).

17           Nine, there are no military cases directly addressing the  
18 authentication requirements of online webpage archives. However,  
19 there are federal and state cases that have addressed authentication  
20 of online webpage archives.

21           Self-Authenticated Business Record M.R.E. 902(11)/M.R.E.  
22 803(6): The Government has provided no authority where a court  
23 addressing a challenge to authentication has ruled that online



1 webpage archives from a non-government source are self-authenticating  
2 business records. The authority is to the contrary. In re  
3 *Homestore.com., Inc. v. Securities Litigation*, 340 F.Supp.2d 769  
4 (Central District of California 2004) (Printouts from a web site do  
5 not bear the indicia of reliability demanded for other self-  
6 authenticating documents under Federal Rule of Evidence 902).

7           b. Testimony by a Witness With Knowledge: Several federal  
8 courts have addressed challenges to authentication of archived  
9 websites by a witness with knowledge under Federal Rule of Evidence  
10 901(b)(1). Courts addressing the issue squarely have agreed that the  
11 admission of such webpages must be predicated either upon the  
12 testimony of an employee of the archiving company or upon the  
13 testimony of someone having personal knowledge of the contents of the  
14 archived web pages such that the witness can testify that the  
15 archived copy is accurate. The only criminal case relied upon by the  
16 Government as authority to authenticate archived webpages in  
17 accordance with Federal Rule of Evidence 901(a)(1) is *US. v. Bansal*,  
18 663 F.3d 634 (3rd Circuit, 2011). In *Bansal*, the Government called a  
19 witness to testify about how the Wayback Machine website works and  
20 how reliable its contents are. The witness also compared the  
21 screenshots with previously authenticated and admitted images from  
22 the website at issue and opined based on her personal knowledge that  
23 they were authentic. The opinion did not identify who the witness

1 was. The other two cases relied upon by the Government for the  
2 proposition that attestations by a witness with knowledge may be  
3 sufficient to authenticate archived webpages in accordance with  
4 Federal Rule of Evidence 901 are civil cases where confrontation is  
5 not at issue. *St. Luke's Cataract and Laser Institute, P.A. v.*  
6 *Sanderson*, 2006 West Law 1320242 (Middle District of Florida 2006)  
7 and *Telewizja Polska USA, Inc. v. Echostar Satellite Corp.*, 2004 West  
8 Law 2367740 (Northern District of Illinois 2004). Other courts  
9 addressing the issue include: *US. v. See, e.g., Sam's Riverside, Inc.*  
10 *v. Intercon Solutions, Inc.*, 790 F.Supp.2d 965 at 980-982 (Southern  
11 District of Iowa 2011) (holding that an archive.org employee can  
12 authenticate archive.org webpages); *US. v. Shrum*, 2011 West Law  
13 1753488 at 1-3 (Eastern District of Arkansas, 2011) (District court  
14 initially admitted archive.org webpage sponsored by a law enforcement  
15 witness but reconsidered and excluded it. Issue was whether the  
16 curative instruction to the jury was sufficient); *Netscape*  
17 *Communications Corp. v. Valueclick Inc.*, 707 F.Supp.2d 640, 644 at  
18 footnote 6 (Eastern District of Virginia, 2010) (District court  
19 admitted archive.org website because sponsoring witness had seen  
20 original and could testify that the archive.org page was an accurate  
21 copy); and *Audi AG and Volkswagen of America v. Shokan Coachworks,*  
22 *Inc.*, 592 F.Supp.2d 246 at 278 (Northern District of New York, 2008)  
23 ("Defendants correctly point out that the Adams Declaration cannot

1 authenticate the search results from www.archive.org because such  
2 evidence may only be authenticated by a knowledgeable employee of the  
3 website.").

4           c. The only case presented to the Court by the parties  
5 that directly addresses authentication in accordance with Federal  
6 Rule of Evidence 901(a)(1) where a third party has donated an  
7 archived webpage to archive.org is a civil case, *Novak c. v. Tucow's,*  
8 *Inc.*, 2007, U.S. Dist. LEXIS 21269 (Eastern District of New York,  
9 2007), affirmed 330 Fed. Appx. 204 (2nd Circuit, 2009) (the  
10 information at issue was only as reliable as the third-party donor  
11 made it.)

12           Ten, the Court considers issues of hearsay and whether  
13 evidence should be excluded under M.R.E. 403 as preliminary questions  
14 in accordance with M.R.E. 103(a) -- 104(a).

15           Conclusions of Law Authentication:

16           One, the Court will consider only admissible evidence  
17 offered by the proponent that will go before the factfinder in making  
18 a preliminary determination regarding authentication.

19           Two, Prosecution Exhibits 31, 31 Alpha, 31 Bravo, 32, 32  
20 Alpha, and 32 Bravo for Identification have been properly  
21 authenticated in accordance with M.R.E. 901(b)(1) via the testimony  
22 of Special Agent Mander. Although Prosecution Exhibit 31 and 32 for  
23 Identification are retrieved from Google.cache, Special Agent Mander

1 testified that he retrieved copies of the same Tweets directly from  
2 Twitter.com as Prosecution Exhibits 31 Alpha and Bravo and  
3 Prosecution Exhibits 32 Alpha and Bravo. These exhibits are also  
4 properly authenticated in accordance with M.R.E. 901(b) (4)  
5 distinctive characteristics as set forth in the Court's findings of  
6 fact regarding these exhibits. Prosecution Exhibits 31, 31 Alpha, 31  
7 Bravo, 32, 32 Alpha, and 32 Bravo for Identification are properly  
8 authenticated.

9           Three, Prosecution 109 for Identification is not  
10 sufficiently reliable to be a self-authenticating business record in  
11 accordance with M.R.E. 902(11) and M.R.E. 803(6). For authentication  
12 in accordance with M.R.E. 901, federal case law on the authentication  
13 issue is persuasive. A witness sponsoring the admission of archived  
14 webpages must either have knowledge of the archiving procedures used  
15 by the archiving entity and/or third party donor entity such that the  
16 witness can testify that the archive actually shows true copies of  
17 the websites they purport to archive or must have knowledge of the  
18 original web page such that the witness can verify that the archived  
19 copy is a true copy of the original. The Government has advised the  
20 Court that it does not intend to admit the attestation by Mr. Butler  
21 (Enclosure 1 of the Government's brief). Accordingly, this Court  
22 finds that the Government has not properly authenticated Prosecution  
23 Exhibit 109 for Identification and it is not admitted.

Four, the PE 31 series of exhibits provide evidence that WikiLeaks or an entity purporting to be WikiLeaks posted a Tweet on 7 May 2010, requesting a list of as many .mil email addresses as possible. The PE 31 series of exhibits is offered by the Government for non-hearsay purposes. Prosecution Exhibit 31 series of exhibits is offered as circumstantial evidence to show PFC Manning's intent to respond to WikiLeaks queries and his knowledge of the scope of disclosures WikiLeaks intended to make. The Government has introduced forensic evidence from Special Agent Al Williamson that the accused downloaded the U.S. Forces-Iraq Microsoft Outlook/Sharepoint Exchange Server global address list (GAL) between 11 through 27 May 2010. This evidence is relevant to the Specification of Charge I (Aiding the Enemy) and Specification 16 of Charge II (stealing, purloining, or knowingly convelling the GAL between on or about 11 through 27 May 2010).

Five, the 8 January 2010, Tweet in Prosecution Exhibit 32 series of exhibits states "Have encrypted videos of US bomb strikes on civilians <http://bit.ly/wlafghan2> we need supercomputer time <http://ljsf.org/>." The portion of the Tweet stating "Have encrypted videos of U.S. bomb strike on civilians" is a statement. The Government offers the Tweet (1) as a hearsay exception under M.R.E. 803(3) (then existing state of mind) to demonstrate WikiLeaks publicized plan to compromise military information as of 8 January

1 2010; (2) for the non-hearsay purpose to show PFC Manning's awareness  
2 of WikiLeaks' openly and publicly posted plan to disclose classified  
3 evidence; (3) for the non-hearsay purpose of the publication of the  
4 Tweet looking for assistance to unencrypt the video as circumstantial  
5 evidence to connect the timing of the Tweet to the appearance on Mr.  
6 Jason Katz' computer on 15 December 2009, of an Afghan video with the  
7 same hash values as the Afghan video from the CENTCOM server with the  
8 video allegedly communicated to WikiLeaks by PFC Manning; and (4) as  
9 a hearsay exception under M.R.E. 803(3) to corroborate PFC Manning's  
10 admissions that he sent WikiLeaks an encrypted video in the internet  
11 chats.

12           For the reasons proffered by the Government above  
13 Prosecution Exhibit 32 is relevant as evidence of PFC Manning's  
14 knowledge of the scope of WikiLeaks' intended disclosure for the  
15 Specification of Charge I (Aiding the Enemy), Specification 1 of  
16 Charge II (Wantonly Causing to be Published) and to prove willful  
17 communication of the Gharani video for specification 11 of Charge II.

18           Six, Prosecution Exhibit 109 for Identification is a  
19 request for information and is offered for the fact that the request  
20 was made not for the truth of the matter asserted. The Government  
21 offers Prosecution Exhibit 109 for Identification for a non-hearsay  
22 purpose as circumstantial evidence that PFC Manning was aware of  
23 Prosecution Exhibit 109 for Identification and his intent to gather

1 information and send it to WikiLeaks. Although the Government has  
2 not presented evidence that the accused actually accessed Prosecution  
3 Exhibit 109 for Identification, the Government has presented evidence  
4 that PFC Manning searched Intelink for WikiLeaks and for some of the  
5 information on Prosecution Exhibit 109 for Identification. The  
6 Government also presented evidence that when a person does an  
7 Intelink search and navigates to another website to continue the  
8 search, Intelink no longer captures the meta-data.

9           The Court finds timing of the Prosecution Exhibit 109 for  
10 Identification posting in conjunction with other evidence presented  
11 by the Government is relevant circumstantial evidence offered for a  
12 non-hearsay purpose to further the inference that PFC Manning was  
13 aware of the information requested by WikiLeaks in Prosecution  
14 Exhibit 109 for Identification. Should Prosecution Exhibit 109 for  
15 Identification be properly authenticated, it is relevant for the  
16 specifications in Charges I and II.

17           Seven, the Court has considered whether the probative value  
18 of Prosecution Exhibit 31 and 32 for Identification series of  
19 exhibits is substantially outweighed by the danger of unfair  
20 prejudice under the criteria in M.R.E. 403 and finds it is not. The  
21 Court as fact-finder will consider the evidence for the proper  
22 admissible purposes.





1 Q. And for how long have you continued to be involved with the  
2 purchase of software?

3 A. From that period on until now.

4 Q. When did you become a warrant officer?

5 A. 2001.

6 Q. What experience purchasing software did you have in the  
7 years leading up to immediately after becoming a warrant officer?

8 A. In the years leading up to it I was assigned to a unit  
9 known as a JCSC down at MacDill Air Force Base. Because of the  
10 unique requirements that our customer base put on us, there would be  
11 times when we would -- our organi -- my team would have to do  
12 purchasing of equipment or software and that was so it would come to  
13 us with the requirement, we would go look at the requirement, you  
14 know, look for technology as applicable to that, put the bids  
15 together -- or put the packages together, make sure it goes out to  
16 three different vendors for bid, and then when it came back to the J8  
17 section we would review that with the J8 to make sure they met the  
18 budgetary requirement for what our customer put on us and also make  
19 sure they met the technical requirements for what we were looking  
20 for.

21 Q. What types of software are you purchasing?

22 A. All kind of different software from network management  
23 software, communications interface software, of course services

1 software that supported your day-to-day services, things for voice  
2 over IP, everything.

3 Q. How many contracts did you review during that time period?

4 A. Dozens.

5 Q. How much of those accounts, of each contract did you  
6 review?

7 A. For those contracts for the team level support stuff it was  
8 cradle to grave, everything.

9 Q. How much of the contract did you read?

10 A. All of it.

11 Q. Did you look at the prices?

12 A. Yes. Well, we were required at times to have to cross  
13 reference that because you would have a -- you would have a cost  
14 associated with it, but suppose it went out for bid and came back and  
15 it either didn't quite meet the technical requirements or it didn't  
16 meet the budgetary requirements, so then you've got to do that take  
17 and give, you know, you've got to balance it out to make sure you're  
18 getting the best bang for your buck.

19 Q. Chief Nixon, you just mentioned technical review as part of  
20 the process. What is that?

21 A. Military is driven on requirements, so the requirement  
22 comes to you, you make sure that -- so you make sure that the  
23 requirement is met to the technical specifications of the contract.

1 To put it very simply, you know, if you're ordering a Ford Mustang,  
2 you order a GT, you want to make sure that you get a GT, not the base  
3 model. Maybe it doesn't quite meet the requirements, maybe you want  
4 to be able to go faster. We do the same thing when it comes to  
5 software and hardware, we do the exact same thing. We want to make  
6 sure because for instance, if you're looking at Exchange, there are  
7 lots of different versions of Exchange, and if I'm building a network  
8 to support 50 guys, I can skimp on a lot of things and I don't need  
9 to buy a robust software package. But if I'm supporting 160,000  
10 people, I need to go all out and I need to buy all those options and  
11 things that come with it. So I have to make sure I'm finding the  
12 happy medium.

13 Q. Let's talk about your involvement in the large scale  
14 shelter program. When were you involved with that program?

15 A. The large scale shelter program was the III Corps services  
16 initiative. From 2008 when I first got to III Corps until I left in  
17 2012, that project ran the entire time while we were there. What it  
18 was is when the Army fielded the BCICS service suites for the Army as  
19 a whole, the Corps kind of got neglected. So each of the Corps,  
20 XVIII, Ist, and III Corps basically had to come up with their own  
21 services programs to be able to support Exchange, file sharing and  
22 all those things out in the tactical environment, so that's what we  
23 built. We built a mobile services shelter to include one that we

1 took with us to Iraq. So the entire time I was there that project  
2 ran the entire gamut.

3 Q. What was your role in the contractual process for that  
4 program?

5 A. For that program in particular, what we did is I made sure  
6 that I was embedded in making sure that the technical requirements  
7 were met for as things came in and went out. When I first started  
8 there I was actually the Corps Engineer, so the backbone of that  
9 network was designed by myself and the people on my team. And then  
10 as I moved over to the plans and operations shop, it became more of  
11 an oversight, technical oversight and a budgeting oversight to make  
12 sure we were meeting all of our requirements that we specified  
13 earlier.

14 Q. How many contracts did you review as part of that program?

15 A. For that contract there were three or four subcontracts  
16 that ran with Billy Asbell and Worldwide Technologies to help us put  
17 that package together and lots of small subcontracts, but three or  
18 four major contracts that interacted with the entire shelter as a  
19 whole.

20 Q. How much of those contracts did you read?

21 A. All of them.

22 Q. Did you see the prices?

23 A. Yes, sir.

1 Q. What was the hardware involved in that project?

2 A. So the hardware for that project, routers, switches,  
3 backbone equipment, you got to be able to make sure that the data can  
4 get from one place to the other, the servers, the fiber channel  
5 switches to go to the backbone of that rack, actual rack space, air  
6 conditioning, the actual hardware for the shelter itself, all of it,  
7 cabling, all of that.

8 Q. What software was involved in that contract?

9 ADC[MAJ HURLEY]: Objection, ma'am. Relevance.

10 MJ: All right. What is the relevance?

11 ATC[CPT VON ELTEN]: Ma'am, this is similar equipment that was  
12 used in the GAL. I'm laying a foundation for personal knowledge of  
13 pricing.

14 MJ: All right. Overruled.

15 A. Repeat the question, sir.

16 Q. What software was involved in the -- in those contracts?

17 A. So for those contracts, of course, you had your normal  
18 management interface software, but we also had to buy all of the  
19 services software, so for all of the servers that we supported, we  
20 had to buy, you know, Server 2008 for those, we had to buy the  
21 Exchange software, and then all of the management software, the  
22 management conceals, network management, even our normal user stuff  
23 like Vista for the machines and XP for the machines and even Office.

1 Q. Chief Nixon, let's talk a little bit about your involvement  
2 with GAL infrastructure again.

3 A. Yes, sir.

4 Q. What was your role with contracts in GAL infrastructure?

5 A. For III Corps or for Iraq, sir?

6 Q. For Iraq.

7 A. For Iraq, technical oversight for those contracts, so  
8 making sure that the technical requirements were met by the contract.  
9 And then, yeah, that was my primary position for that, sir.

10 Q. What technical requirements did you consider as part of  
11 those contracts?

12 A. So within those technical requirements, since we're talking  
13 about software, so for Microsoft Exchange, so what I would do is I'd  
14 weigh making sure looking at what my customer base was, my customer  
15 base for Iraq was 160,000 to 200,000, that was the area that I had to  
16 work within based on surge, contracted personnel, things like that.  
17 So if I look at, if I look at that requirement, okay, I've got to buy  
18 Exchange, I've got to buy so many instances of Exchange to filter  
19 through the network, I've got enterprise level servers at USFI, but  
20 then I've got local instances of those servers as they push further  
21 down into the network. And then you have to buy what's known as a  
22 CAL, which is a client access license. Okay. Client access licenses  
23 are where companies like Microsoft make their money. It used to be

1 where they just sold you software at a ridiculous price and that's  
2 what you paid. What they've done is gone to a client access  
3 structure so what you do is drive the cost of the base software  
4 really low, but then you're forced to basically pay for each machine  
5 and each user on your network. So for Exchange, I had to buy CALs  
6 based on how many databases I wanted to be able to talk to. For  
7 Active Directory I had to buy CALs, or not I, but USFI had to  
8 purchase CALs based on each user and machine in the greater Iraq.mil  
9 domain.

10 Q. How many contracts did you review for the Iraq GAL?

11 A. For the Iraq GAL -- So for the services that would be tied  
12 or used for GAL, we did some server upgrades while I was there to  
13 Server 2008, and we also did some hot line purchases for CALs that or  
14 for units that weren't able to support themselves. And then you had  
15 the infrastructure -- so then you had the -- I'm trying to run  
16 through it real quick. Sorry. That is all of them.

17 Q. About how many?

18 A. There were three or four major contracts that ran through  
19 that, sir.

20 Q. How much of those contracts did you read?

21 A. I read most of the technical and the pricing pieces for  
22 them because we had to bounce that back off of J8 for budgeting.

1 Q. Let's talk a little bit about hardware. What hardware was  
2 part of those contracts?

3 A. So for contracting for hardware piece, we did a network  
4 upgrade in Iraq to a MPLS backbone, cost about 1.2 million dollars to  
5 support the infrastructure there. You also had various server moves  
6 and a few other moves. So for hardware, that's a day-to-day almost  
7 regular occurring cost for an organization as big as USFI.

8 Q. What types of hardware were included?

9 A. So routers, switches, backbone infrastructure by the fiber  
10 network channels, servers, cabling, again same thing you run into  
11 like with the LLS, air conditioning, all of those things kind of tie  
12 in to support a network.

13 Q. You just mentioned cabling. How much cabling did the GAL  
14 require?

15 A. The GAL itself you would look at the -- if you would look  
16 at the cabling infrastructure within USFI Headquarters or even  
17 locally, it's a fairly large infrastructure of cabling that requires  
18 to interconnect 64 physical switches along with all of the other  
19 infrastructures that takes into play, sir.

20 Q. How much does the cabling cost?

21 ADC[MAJ HURLEY]: Objection, ma'am. Hearsay.



1           ATC[CPT VON ELTEN]: Your Honor, the witness has testified that  
2 he has knowledge based on the contracts and the contracts are not  
3 hearsay.

4           MJ: I agree. He's testifying about his personal knowledge.  
5 Overruled.

6           A. So costs for the cabling itself, you're really looking at  
7 physical infrastructure that we had in place. So, you are talking  
8 about the NEXIS Backbone switches in the area of about a hundred  
9 dollars apiece. You are talking about the servers themselves which  
10 are, be nice and conservative, about 10,000 dollars apiece. And then  
11 if you would actually look at, we ran miles of cable between all of  
12 that infrastructure, so it's about 56 dollars for a thousand feet of  
13 CAT 5.

14          Q. What would the GAL's functionality have been without  
15 cabling?

16          A. If you don't have physical infrastructure, it doesn't work.

17          Q. What storage -- What hardware for storage was contemplated  
18 under these contracts?

19          A. Well, you have to have an area for -- You have to have  
20 somewhere to store your stuff, just like in a house you've got  
21 closets, well, for a network we've got to have somewhere to do that.  
22 So our equivalent to throwing everything in the garage is a SAN, a  
23 storage area network. So you have a storage area network plus you

1 have the internal storage on each one of the servers which in a  
2 virtual environment is a shared resource across.

3 Q. How many SANs did the GAL require?

4 A. For the services piece of the network that we designed  
5 there in Iraq, we had two SANs, one at the backup site and the  
6 primary inside the actual infrastructure itself.

7 Q. How much does a SAN cost?

8 A. About 1.2 million dollars.

9 Q. What functionality does a SAN provide?

10 A. SAN, like I said before, it gives you a place to store  
11 everything at once. I'm running the network the size of Iraq that --  
12 that we ran in Iraq is really one of the more complex undertakings  
13 we've gone as a military. So you have to have somewhere to be able  
14 to store all of that and it has to be accessible in a rapid fashion,  
15 so you can't shortchange on that and just daisy chain a whole bunch  
16 of hard drives together.

17 Q. What was the functionality of the GAL without the SAN?

18 A. It wouldn't work. It would -- You would reach a point of  
19 saturation within the virtual environment and the servers would  
20 crash.

21 Q. You mentioned switches a moment ago. How many Nexus  
22 backbone switches did the GAL require?

1           A.    We had two for each primary site, so the one in the JCSC  
2   itself and one in the palace.

3           Q.    How much does each of those cost?

4           A.    Those were right around \$100,000.

5           Q.    What functionality did they provide for the GAL?

6           A.    They provide rapid access to the actual physical  
7   infrastructure of the servers and to the SAN itself, so it allows for  
8   rapid communications across all of those platforms.

9           MJ:   What function were we talking about there?

10          ATC[CPT VON ELTEN]: The Nexus backbone switch, ma'am.

11          MJ:   Thank you.

12          Q.    What would the GAL's functionality have been without the  
13   Nexus switch back?

14          A.    Again, it kind of ties into the physical infrastructure  
15   piece. If you don't the physical infrastructure it doesn't go  
16   anywhere.

17          Q.    Chief Nixon, you also mentioned servers. How many servers  
18   were required for the GAL, physical servers?

19          A.    We had 64 servers to support SIPR and NIPR for those  
20   environments and then you had a lesser number in Al-Faw Palace. I  
21   want to say somewhere around half. So about 64 for the actual  
22   primary itself.

1           Q.    I believe you gave the answer, but just for clarification,  
2 how much does each server cost?

3           A.    About \$10,000 apiece. That's a conservative estimate. We  
4 rated some high-end servers over there in Iraq.

5           Q.    Let's talk a little bit about software now. What software  
6 was covered in these contracts?

7           A.    All different types of software from, again, you talk about  
8 network management software, you talk about management console  
9 software, and then the ones we're primarily concerned with would be  
10 the Active Directory for the main controller, of course Exchange,  
11 and then the server platforms they sit on. I can buy Exchange, but I  
12 still have to have a server platform -- software platform for it to  
13 sit on.

14          Q.    A few moments ago you talked about CALs and a few other  
15 things. Let's talk about how software is contracted in terms of  
16 pricing. How generally does the military pay for software?

17          A.    Okay. So generally paid for depends on what we're looking  
18 at. So if we had a -- So if we had an Army unit within somewhere in  
19 Iraq that needed something, they would put a requirements request. A  
20 requirements would come to USFI. If it's not something that we can  
21 find or if it's considered a program of record, which means it should  
22 be taken care of by ASOL who does acquisitions for POR systems in the  
23 Army, it would go to them. But if it was something that we could

1 field internally to Iraq, then we would -- it would go through our  
2 contract and budgeting process. Where our building was located on  
3 Al-Faw Palace, literally cater-corner to us right across the  
4 street was contract command, so we were able to interface with them  
5 on a regular basis to make sure that the process went smoothly.

6 Q. How was the price split up for Active Directory?

7 A. Okay. So for Active Directory, I buy my initial platform  
8 for Active Directory which, you know, depending on who you go to to  
9 bid for, you get between 3 -- \$3500 and \$5000.00 for the actual  
10 platform itself. But then I've got to buy a server platform so I'm  
11 looking at 2008, I have to buy an enterprise edition for that because  
12 of the level of communications I have to have, so I'm looking at  
13 another, again, \$3000 to \$5000. The problem we run into there after  
14 that, then you're talking about the CAL. So for every machine that's  
15 added to Active Directory in Iraq, I have to have a CAL for it. And  
16 also on top of that for every user I have in my Active Directory list  
17 within my domain I have to have a CAL for them. So pricing on the  
18 street right now is between \$35 and \$65 for a CAL for each  
19 individual user or machine, so even if you were looking at, even if  
20 we said we paid a dollar for a CAL, which we didn't, it would be  
21 \$160,000 just to support the users on the GAL for USFI.

22 Q. Could you please explain what a CAL is?

1           A.    Okay. A CAL is a client access license. Again, I come  
2 back to in the old days that software companies made you pay a whole  
3 lot of money for their software, so people looked at that as sticker  
4 shock, so they said, okay, we'll figure out a different way around  
5 this. So then they came out, Microsoft came out and they reduced the  
6 cost of the actual piece, but then they -- what they did is they had  
7 the client access licenses which is the requirement. So for Exchange  
8 it's for you to be able to communicate to databases; for Active  
9 Directory it's for you to be able to add users to your domain or  
10 machines to your domain. And for servers it's for number of servers  
11 that I need to be able to talk to and how many instances I need to be  
12 able to install it. So they come up with this, it's really a smoke  
13 and mirrors piece so, yes, it still comes down to the more people I  
14 have to support on my network, the more expensive it gets.

15           Q.    What would the GAL's functionality have been without Active  
16 Directory?

17           A.    It doesn't function without it. It is a direct -- The GAL  
18 is a direct product of the Active Directory global address system.

19           Q.    How is the pricing created for Exchange?

20           A.    Okay. So for Exchange, depending on where I was putting  
21 that Exchange server, so you had your primary enterprise Exchange  
22 servers at USFI, and then below that in each local instance you put  
23 Exchange servers further down. If I've got a BCT sitting out there I

1 don't want for the staff, I don't need the S-2 and the S-3s email to  
2 have to go all the way up to division and come back down for them to  
3 do that. So I put a local Exchange server there to be able to  
4 increase productivity and allow them to be able to communicate with  
5 one another so that most of my communications going out of the  
6 organization are server to server, so that helps me scale it a little  
7 bit. And then after that -- So that allows me to figure out how many  
8 licenses I have to buy for the base software, and then my user and my  
9 machine population help me dictate how many calls that I have to buy  
10 to support that.

11 Q. Based on all of that, how much money was spent on Exchange  
12 software?

13 A. For Exchange software the enterprise license for Exchange  
14 software would have run us, very conservative estimate, about  
15 \$60,000, for the USFI Headquarters.

16 ATC[CPT VON ELTEN]: Thank you.

17 MJ: Cross-examination.

18 ADC[MAJ HURLEY]: Yes, ma'am.

19 **CROSS-EXAMINATION**

20 **Questions by the assistant defense counsel [MAJ HURLEY]:**

21 Q. Good morning, Chief Nixon.

22 A. Good morning. Sir.

1 Q. Now, on direct examination you talked with the government  
2 about the cost of maintaining the Active Directory?

3 A. Yes, sir.

4 Q. And I just want to go over this Active Directory, Global  
5 Address List distinction again?

6 A. No problem, sir.

7 Q. All of the infrastructure that you're talking about with  
8 Captain von Elten, that was about the infrastructure to maintain the  
9 Active Directory?

10 A. To maintain services.

11 Q. Right. And the Active Directory is the thing that  
12 maintains services, or one of them?

13 A. It is the backbone for your services, yes, sir.

14 Q. Right. And one of the services that the Active Directory  
15 provides, an important function is the Global Address List?

16 A. Yes, sir.

17 Q. Chief, I can tell from your uniform that you're an Army  
18 officer?

19 A. Yes, sir.

20 Q. So let's use Army C2 nodes when we talk about the structure  
21 of the database.

22 A. Okay, no problem, sir.



1 Q. The database you worked with in the one in Iraq is the one  
2 I'm going to talk about, just that one.

3 A. Yes, sir.

4 Q. The lowest Army echelon with the Active Directory is the  
5 brigade?

6 A. Yes, sir.

7 Q. Thus the lowest Army echelon with the Global Address List  
8 is the brigade?

9 A. Yes, sir.

10 Q. The brigade's subordinate units instead of having their own  
11 Active Directory and Global Address List, they'll just plug into the  
12 brigade's?

13 A. Yes, well, battalion services are provided by the brigade.  
14 It's not a separate network. They sit within the brigade's domain  
15 and all their services provided by the brigade.

16 Q. Got you. So we move up the chain a division level in the  
17 Army is going to have an Active Directory.

18 A. Yes, sir.

19 Q. And a Global Address List?

20 A. Yes, sir.

21 Q. And subordinate brigades will be a part of the division's  
22 active Global Address List?

1           A.    Yes.  To a degree.  The brigades maintain their own Active  
2   Directory, their own GAL, their own services environment, and those  
3   services talk to division environment on a server level to maintain  
4   communications.  So you don't want the division providing service to  
5   the brigade, it tends to clog the networks.

6           Q.    So the brigade Active Directory plugs into their superior's  
7   Active Directory?

8           A.    Yes, sir.

9           Q.    Is that the best way to describe it?

10          A.    Yes, sir.

11          Q.    And then the divisions for the time that you're in Iraq,  
12   we've done away with Multinational Corps Iraq, right?

13          A.    Yes, sir.

14          Q.    So at this point USFI had direct control over the  
15   divisions?

16          A.    Yes, sir.

17          Q.    So the division Active Directory GAL would plug into  
18   USFI's?

19          A.    Yes, sir.

20          Q.    Now, you testified that you've seen Prosecution Exhibit 47  
21   which is the CD that the Global Address List is located on?

22          A.    Yes, sir.

1 Q. And you also testified that you had seen before, you  
2 testified before that you saw a piece of paper with the Global  
3 Address List, a representation of Prosecution Exhibit 47?  
4 A. Yeah, I had seen it.  
5 MJ: What exhibit is that?  
6 ADC[MAJ HURLEY]: The CD, ma'am, is Prosecution Exhibit 47?  
7 MJ: No. The paper.  
8 ADC[MAJ HURLEY]: 147, ma'am.  
9 MJ: Thank you.  
10 A. So, yeah, the digits and the actual physical printout, yes,  
11 sir.  
12 Q. Can you call to mind the Prosecution Exhibit 147 so that we  
13 don't have to ----  
14 A. Yeah, that's fine, sir.  
15 Q. All right. Now, that appeared to be a GAL?  
16 A. Pieces of the GAL, yes, sir.  
17 Q. Now, we just talked about there are different GAL levels,  
18 right?  
19 A. Yes, sir.  
20 Q. And do you have an opinion as to what level this GAL was?  
21 A. Yes, sir.  
22 Q. To you, Prosecution Exhibit 47 is a division level GAL?  
23 A. Yes, sir.

1 Q. Not a brigade level GAL?

2 A. No.

3 Q. Not the USFI level GAL?

4 A. No.

5 Q. But a division GAL?

6 A. Yes, sir.

7 Q. Now, just to sum up something I started off with because I  
8 wanted to clear up that confusion. The maintenance costs that you  
9 talked about were costs associated with an Active Directory?

10 A. Yes, sir.

11 Q. And the maintenance cost, there are no maintenance costs  
12 specific to the Global Address List?

13 A. If you're talking about actual software costs, you're  
14 correct, but you still have a maintenance cost in there with  
15 personnel. You can't get away from that.

16 Q. The personnel to keep up the Global Address List?

17 A. Yes, sir.

18 Q. And those personnel would be those people on help desks,  
19 right?

20 A. They would be in charge of -- They would run adding and  
21 taking away from the Global Address List, but overall maintenance  
22 piece to that would belong to the individual managing the Active  
23 Directory for that piece.

1 Q. For that part of the organization?

2 A. Yes. So if you're looking at the division, they had, of  
3 course they had your division staff and you had ITT contractors that  
4 also supported that piece for the divisions.

5 Q. Okay. And then, now, when it comes to this distinction  
6 between the Active Directory and the Global Address List, the Active  
7 Directory could run without the Global Address List?

8 A. Yes.

9 Q. It would be -- But I can tell the concern on your face, but  
10 that would be a very difficult function to have just an Active  
11 Directory and not a Global Address List?

12 A. I would say vice versa -- I would the exact opposite.

13 Q. Okay.

14 A. I would that, yes, I can have -- I can -- because of the  
15 way Active Directory is set up, the Active Directory is a directory,  
16 everything sits on your domain. So if for some reason the Active  
17 Directory wasn't able to produce a GAL, that would mean that I didn't  
18 have anything in Active Directory, I wouldn't have any user, I  
19 wouldn't have any clients, I wouldn't have any machines.

20 Q. Right.

21 A. So it's really hard to separate the two because ---

22 Q. They are so closely tied together?

23 A. One is a direct product of the other.

1 Q. And that is the GAL's a direct product of the Active  
2 Directory?

3 A. Yes, sir.

4 Q. Got it. Thanks, Chief. Now, let's talk about these  
5 contracts as they would come into your organization in the J-6,

6 A. Yes, sir.

7 Q. When you were in USFI is what' I'm talking about.

8 A. Yes, sir.

9 Q. As the contracts would come in, would they come in  
10 originally as operational needs statements or how does the -- how do  
11 those two things work together?

12 A. It would depend. Again, nature of the request. For an  
13 operational needs statement, you have two operational needs  
14 statements, you have one that's an Army driven piece and you have one  
15 that's a joint piece. For instance, everything that provided theater  
16 provided equipment in Iraq would have been a joint operational needs  
17 statement, because everything was provided out of CENTCOM budgeting  
18 and down to USFI and filtered out to the network. So odds are if you  
19 had a machine that was sitting on an Iraq.mil network or domain, then  
20 that machine was provided as TPU equipment, more than likely was  
21 provided as TPU equipment and filtered down. So that would have been  
22 either through a joint statement or going down through the process.  
23 For an Army organization, so if I'm ----

1 Q. Brigade combat team?

2 A. Brigade combat team, 41.Army.mil -- 41BCT.Army.mil  
3 infrastructure, that would have had to have gone through the DA,  
4 Department of the Army process. Again, it comes up through USFI  
5 Headquarters and goes out through there, so we would be the brokers  
6 for them to the Department of Army on something like that. So you  
7 had two ONs processes for those pieces. And then you also had a  
8 localized inner theater requirements process for something if we  
9 would fill it in theater, we would do so.

10 Q. So those contracts that you're talking about with Captain  
11 von Elten and the money that you spent, was that a product of the in  
12 theater operational needs process?

13 A. Some of them were. So, for instance, day-to-day updates,  
14 things like that, so software update for Server 2008, or trying to  
15 get 2003 out of the network, trying to update 2008, that would be  
16 something we fund internally from USFI budgeting. And again,  
17 anything -- but for instance, the network backbone infrastructure  
18 upgrade that we talked about, that went up to CENTCOM and then back  
19 out because one, we didn't want to pay for it because it was support  
20 for the State Department eventually as we turned things over, but  
21 also because it was a massive chunk of our budget as we were drawing  
22 the budget down.

23 MJ: What was that for?

1           WIT: That was for the network upgrades, ma'am.

2           MJ: Thank you.

3           Q.    What I want is the general practice, not specific to ONs or  
4 this contract or I'm leading into another question I was going to ask  
5 you, Chief.

6           A.    No problem.

7           Q.    So the general practice was this document would come into  
8 the J-6, come into your shop, you would take it and first review it  
9 for a technical review?

10          A.    Yes, sir.

11          Q.    And as you were doing the technical review, you would also  
12 have input into the budgeting requirements that were included in this  
13 document?

14          A.    Yes, sir.

15          Q.    And as you had input, you would vet the cost yourself, the  
16 costs associated with these things?

17          A.    No. No.

18          Q.    You would not?

19          A.    No. So the cost for the vetting process would come in if  
20 requirements weren't able to be met based on whatever J8 was able to  
21 provide for cost. So we would look at them from a, yes, you need to  
22 buy this many CALs, maybe 60 bucks a pop is way too much, you need to



1 reconsider, but as part of the overall vetting process the J-6 is not  
2 the money stamp, the J8 is.

3 Q. Got you. And that's exactly the people I want to talk to  
4 you about.

5 A. Yes, sir.

6 Q. So there would be an internal process inside the J-6?

7 A. Yes, sir.

8 Q. A technical process?

9 A. Yes, sir.

10 Q. A cost process?

11 A. Yes, sir.

12 Q. Then you'd have to walk down the stairs or down the hall,  
13 however you got there ----

14 A. Yes, sir.

15 Q. ---- euphemistically or actually to the J8?

16 A. Yes, sir.

17 Q. And the J8 are the resource managers --- were the resource  
18 managers for the USFI?

19 A. They are the hole of the pocketbook.

20 Q. The money spenders?

21 A. Yes, sir.

22 Q. Before you went down there, you knew that you needed to  
23 have a defensible thing that you wanted?

1 A. Yes, sir.

2 Q. And the cost?

3 A. Yes, sir.

4 Q. And before you go down there, you have to take a hard look  
5 at that cost. Is that correct?

6 A. Yes.

7 Q. To make sure that not only does it cover the thing you  
8 need, right?

9 A. Yes, sir.

10 Q. But also some, because you're very experienced and this  
11 wasn't your first trip to Iraq, the extra to address easily  
12 anticipated things that you'll need along the way, right?

13 A. Yes, sir. Just like when we're talking about CALs, we, you  
14 know, the Iraq network at its apex was about 160 to 165,000 people on  
15 the GAL, but we had to have a cushion for about 20,000 -- we had to  
16 cushion between 40,000 and 50,000 CALs and we ended up -- and a lot  
17 of those we ended up issuing out to tactical organizations for their  
18 own use.

19 Q. Had to have a cushion?

20 A. Yes, sir.

21 Q. Had to have or not, it was extraordinarily prudent to have  
22 a cushion?

23 A. Yes.

1 Q. Any action that you send down to J8, it's extraordinary  
2 prudent to have a defendable cushion so you can get all the money  
3 you need fenced?

4 A. Yes, sir.

5 Q. And by fenced I mean saved for use so that it could be  
6 spent it on the thing that you want.

7 A. Yes, sir.

8 Q. Let's talk about this infrastructure, Chief. You said  
9 there were 64 NIPR servers that supported the Active Directory Global  
10 Address List?

11 A. Yes, sir.

12 Q. And even more virtual servers that supported this?

13 A. Yes, sir.

14 Q. There were routine problems with these?

15 A. Well, yeah, you have ----

16 Q. During your deployment?

17 A. Yes. I mean you always had network outages. It's a  
18 massive network, at times, at best you're working on questionable  
19 infrastructure at best, so you also have bandwidth issue or things  
20 like that.

21 Q. Band width issue is something you'd characterize as a small  
22 problem?

23 A. Not always.

1 Q. Scalable I guess?

2 A. Yes, scalable is a better word.

3 Q. It's a varying problem. A big problem would be a satellite  
4 outage would be a big problem?

5 A. Yes, sir.

6 Q. But those problems were routinely addressed during this  
7 2009/2010, timeframe?

8 A. Yes, sir.

9 Q. As I understood from what you told me yesterday, 90 percent  
10 network reliability is standard for deployed operations?

11 A. Between 90 and 95 percent is the standard. I could -- We  
12 definitely ran -- DISA standard is what's known as 5/9. It's 99.999  
13 percent. That's DISA standard for fixed infrastructure. Tactical  
14 infrastructure, acceptable is 95 and better. And we definitely were  
15 well within that piece, between that 95 and 99 percent, we were, for  
16 the most part we were there.

17 Q. And you just weren't static on Victory Base complex, were  
18 you, Chief, during this deployment?

19 A. Not at all.

20 Q. You went all over the country?

21 A. Yes, sir.

22 Q. Trying to keep different units at different echelons  
23 plugged into the network and communicating properly?

1           A.    Yes, sir.

2           Q.    And when we talked yesterday, you said the USFI network  
3 while you were there had a reliability rating of 97 percent?

4           A.    Yes, sir.

5           Q.    And that applies to both the Active Directory and the  
6 Global Address List?

7           A.    Yes, sir.

8           Q.    To your knowledge, was the Global Address List ever  
9 unavailable because servers were stolen?

10          A.    No, sir.

11          Q.    To your knowledge, were they ever moved, and by they, I  
12 mean the servers by someone not authorized to move them?

13          A.    We had equipment moved at times, sir, you know, brigade  
14 commander walks in and goes, I don't like that crap right there, I  
15 want you to move it over there. We ran into issues like that. But  
16 sitting on the network, the way you sit on a network it was something  
17 that was easily identifiable, so they'd get the call. What are you  
18 guys doing down there?

19          Q.    So even at USFI you had visibility such that if a server is  
20 pulled off?

21          A.    Yeah, yeah, you would see it within moments.

22          ADC[MAJ HURLEY]:    Just one second, I want to look at some  
23 notes.

1 WIT: No problem.

2 ADC[MAJ HURLEY]: Thank you. Thanks, ma'am. Nothing further.

3 MJ: Redirect?

4 ATC[CPT VON ELTEN]: Nothing, ma'am.

5 MJ: I don't think I have anything either. Temporary or

6 permanent excusal?

7 ATC[CPT VON ELTEN]: Temporary, ma'am.

8 **[The witness was temporarily excused, duly warned, and withdrew from**

9 **the courtroom.]**

10 MJ: Counsel, do you want to proceed or is this a good time for

11 about a 10-minute recess.

12 TC[MAJ FEIN]: It's a great time, ma'am.

13 MJ: Ten minutes sufficient?

14 TC[MAJ FEIN]: Yes, ma'am.

15 MJ: All right. Why don't we make it just -- we'll make it 13.

16 We'll start again at 11:00 o'clock.

17 TC[MAJ FEIN]: Yes, ma'am.

18 MJ: Court is in recess until 11:00 o'clock.

19 **[The court-martial recessed at 1053, 28 June 2013.]**

20 **[The court-martial was called to order at 1112, 28 June 2013.]**

21 MJ: Court is called to order. Major Fein, please account for

22 the parties.

1 TC[MAJ FEIN]: Yes, ma'am. Your Honor, all parties when the  
2 Court last recess are present with the following exceptions: Captain  
3 von Elten is absent, Captain Whyte is present.

4 MJ: Is there anything we need to address before we proceed?

5 TC[MAJ FEIN]: No, ma'am.

6 CDC[MR. COOMBS]: No, Your Honor.

7 MJ: All right. Government.

8 TC[MAJ FEIN]: Ma'am, the United States calls Colonel David  
9 Miller.

10 COLONEL DAVID MILLER, U.S. Army, was called as a witness for the  
11 prosecution, was sworn, and testified as follows:

12 **DIRECT EXAMINATION**

13 **Questions by the trial counsel [MAJ FEIN]:**

14 Q. Sir, you are Colonel David Miller, the current Chief of  
15 Staff of the 1st Infantry Division?

16 A. I am.

17 Q. And, sir, how long have you been the Chief of Staff for?

18 A. A couple of weeks.

19 Q. And, sir, what are your responsibilities as the Chief of  
20 Staff of 1st ID?

21 A. In general I run the day-to-day business of the Division at  
22 Fort Riley and its outlying satellites.

1 Q. And what was your position before becoming the Chief of  
2 Staff of the 1st Infantry Division?

3 A. I was the Commander for Brigade Modernization Command at  
4 Fort Bliss, Texas.

5 Q. And what is the Brigade Modernization Command?

6 A. It is a subunit for Training and Doctrine Command. We  
7 conduct -- They conduct now twice a year network integrative  
8 evaluations in order to do doctrine organization training material  
9 and leadership evaluations and then recommendations to the Chief of  
10 Staff of the Army to provide the latest equipment and techniques to  
11 deploying units.

12 Q. And, sir, what were your actual responsibilities within the  
13 brigade -- excuse me -- the command?

14 A. Yeah. I essentially ran and had oversight of the planning  
15 and the execution of each of those network integrative evaluations  
16 that were done twice a year.

17 Q. And, sir, how long were you the Deputy Commander of that  
18 command?

19 A. Two years.

20 Q. And what was your duty position prior to assuming that  
21 role?

22 A. I was the Commander of the 2nd Brigade Combat Team, 10th  
23 Mountain Division.



1 Q. And how long were you the Brigade Commander of 2/10  
2 Mountain?

3 A. About 41 months.

4 Q. When did you assume command and when did you leave command?

5 A. I took command in December of 2007 and I took -- I left  
6 command in late spring of 2011.

7 Q. Sir, what positions did you hold before becoming the  
8 Mountain Commander?

9 A. Prior to that I was the Deputy Commander for the Operations  
10 Group at the Joint Readiness Training Center at Fort Polk, Louisiana.  
11 I was in the Army War College for a year before that. And I was the  
12 Commander of the 1st Battalion, 14th Infantry, out of Schofield  
13 Barracks in Hawaii prior to that.

14 Q. And sir, from your time as the Deputy Commander of  
15 Operations Group at JRTC, what were your responsibilities there?

16 A. Essentially I assisted the COG, the Commander of the  
17 Operations Group in all facets of his duties which primarily focused  
18 on providing coaching and mentoring to brigade commanders and their  
19 staffs and battalion commanders and their staffs for the rotational  
20 unit as they came through.

21 Q. Sir, was the Operations Group at the JRTC, were they in  
22 charge of all the observer controllers?

1           A.    Yes.    The entire -- That was the purpose of the Operations  
2 Group was to run all of the OC teams during their rotational cycles.

3           Q.    Sir, as the Deputy Commander for the COG, did you also --  
4 were you an observer controller?

5           A.    Yes.

6           Q.    And who did you observe and control?

7           A.    For the most part I focused on the brigade commanders and  
8 their staffs, and to some extent the battalion commanders.

9           Q.    How many brigades rotated through while you were fulfilling  
10 the role of an observer controller?

11          A.    Ten, which is the standard for any given year for a CTC.

12          Q.    And, sir, what is your branch in the Army?

13          A.    I'm an Infantryman.

14          Q.    And, sir, how long have you been an Infantryman?

15          A.    Twenty-seven years.

16          Q.    Sir, when did you first arrive at Fort Drum?

17          A.    I arrived there in the fall, September of 2007.

18          Q.    And again, sir, when did you take command of your brigade?

19          A.    In December of the same year, 2007.

20          Q.    And, sir, when you took command of 2/10 Mountain, when did  
21 -- at that time when had the brigade last deployed?

22          A.    They had just returned from a 15-month deployment just  
23 before Thanksgiving of that same year.

1 Q. And when you took command, sir, what was the brigade  
2 mission in garrison?

3 A. When I took command we went through about a 6-month reset,  
4 reorganization time period, and then that summer we assumed the  
5 global response force mission for the Army.

6 Q. And, sir, what is the global response force mission?

7 A. At any given time the Army's got one brigade combat team  
8 designated to be on a short string, if you will, short notice  
9 deployment to any unexpected hot spots that may arise anyplace in the  
10 world.

11 Q. And, sir, how many brigades are designated with that global  
12 force response team?

13 A. At any given time, one.

14 Q. And what were the brigade's responsibilities in regard to  
15 the global response force mission?

16 A. It was to stay in a trained status both with perspective  
17 personnel manning, equipment, and then the unit proficiency, training  
18 proficiency, and then be able to respond, as I mentioned, on short  
19 notice based on indications and warnings to any kind of an operation,  
20 from humanitarian assistance to full combat operations.

21 Q. And, sir, when did the brigade transition into preparing  
22 for a future deployment, approximately?

1           A.    About a year after that, so the following -- 2008, or,  
2    yeah, summer of '08.

3           Q.    Sir, have you ever met PFC Manning? I'm sorry, sir. Just  
4    before that.

5           A.    Sure.

6           Q.    You arrived when to 2/10 Mountain?

7           A.    I took command in December of 2007.

8           Q.    Okay, sir. And then when did ----

9           A.    So, I'm sorry. You asked me about the time line. So  
10   summer of 2009 would have been when we started our transition from  
11   that mission towards focus on deployment.

12          Q.    And what was that focus in the summer of 2009?

13          A.    Initially Afghanistan.

14          Q.    Okay, sir. And what did it change to?

15          A.    To Iraq.

16          Q.    Sir, have you ever met PFC Manning?

17          A.    Excuse me. Yes, I have.

18          Q.    And when was -- when about was the first time you met PFC  
19   Manning?

20          A.    It was sometime during the time during the time period, we  
21   were on the global response force mission.

22          Q.    And what -- and how did you meet him?

1           A.    As part of our maintaining readiness for that mission we  
2 would do weekly staff updates to myself and the battalion commanders  
3 focusing on different global hot spots, if you will, or regional  
4 areas to maintain our situational awareness and understanding. And  
5 as part of that, PFC Manning gave part of the Intel update during a  
6 few of those weekly updates.

7           Q.    Sir, was it common for a junior enlisted Soldier to be  
8 briefing the commander during staff updates like that?

9           A.    No, not really.

10          Q.    So why in the S-2 section did that happen?

11          A.    I believe because of the S-2 approach as part of junior  
12 Soldier and leader development was to have them prepare for and  
13 conduct those briefings as part of their professional development.

14          Q.    And, sir, did you deploy as the brigade commander of 2/10  
15 Mountain?

16          A.    Yes.

17          Q.    And was that your first -- Or when was that deployment?

18          A.    That was from the fall of 2009 to the summer of 2010.

19          Q.    Sir, was that your first deployment?

20          A.    No.

21          Q.    How many deployments have you had in your past 27 years?

22          A.    Four.

23          Q.    Could you briefly describe those, please?

1           A.    I had two combat deployments, one as a brigade commander,  
2 2/10, to Iraq; another 14-month deployment as a battalion task force  
3 commander, also to Iraq. And then two other operational deployments  
4 to the Balkans.

5           Q.    I'm sorry, sir, you just answered this, the length of the  
6 deployment. What was the brigade's area of responsibility, AOR,  
7 within Iraq when 2/10 Mountain deployed?

8           A.    We were responsible for all of Eastern Baghdad and the  
9 Madai province to the east of Baghdad.

10          Q.    And, sir, when your brigade deployed, what division -- what  
11 U.S. division did you fall under in Iraq?

12          A.    U.S. Division Center.

13          Q.    And what, during your deployment, sir, what flags -- what  
14 actual combat division headquarters fulfilled or were the USDC?

15          A.    I got you. Initially it was the 1st Cav Division for about  
16 the first roughly 3 months, and then 1st Armored Division after that.

17          Q.    Sir, going back to the area of responsibility of your  
18 brigade, how would you describe or could you please describe for the  
19 court the size of 2/10 Mountain's AOR within Iraq?

20          A.    I think it was roughly about 500 square kilometers or so.  
21 It was a pretty big AOR for a brigade combat team.

22          Q.    And what were the primary FOBs, COBs, JSSs in your AOR?

1           A.    The brigade was dispersed across about 17 or 18 different  
2 size combat outposts, joint security stations and forward operating  
3 bases. The two primary brigade outposts were FOB Hammer, which was  
4 outside the city and Joint Security Station Loyalty in the city. So  
5 the brigade main was out at Hammer and my forward command post was at  
6 Loyalty. Each battalion had their outpost and so I had two maneuver  
7 battalions in the city itself and two maneuver battalions outside the  
8 city. In the city, in addition to those two battalion locations, we  
9 had about seven -- about seven company platoon sized outposts  
10 dispersed throughout the area from Sadar City, possibly south to  
11 Zafrania, and then out in the Madine, the rural area, we had about  
12 the same number of company and platoon outposts as well.

13           Q.    Sir, where was your brigade headquarters?

14           A.    The main headquarters was at FOB Hammer.

15           Q.    And where was the majority of your brigade staff located?

16           A.    Most of the staff was at Hammer with the main, and then a  
17 small staff forward at JSS Loyalty with the forward CP.

18           Q.    And, sir, how far was FOB Hammer from Baghdad?

19           A.    Probably about 60 kilometers.

20           Q.    Sir, how long had the brigade headquarters building been  
21 located at FOB Hammer by the time 2/10 took over?

22           A.    It was just established there. As part of our transition  
23 with the unit we replaced, we had agreed and arranged that the

1 brigade main would move out of Loyalty out to Hammer, be established  
2 during the transition, our brigade would fall in on it, and that was  
3 done as part of the condition setting to reduce the footprint of U.S.  
4 forces inside the city.

5 Q. Sir, could you please briefly describe for the Court what  
6 were the key over-arching tasks of your brigade while -- for your  
7 deployment?

8 A. Sure. So we were there for the last OIF mission and the  
9 transition to Operation New Dawn; New Dawn being the drawdown of  
10 forces in theater, the response drawdown. So we had a twofold  
11 mission as we saw it -- as I saw it. First, it was to build capacity  
12 in the Iraqi Security Forces and simultaneously create enough  
13 stability amongst the population to insure that the threats that were  
14 left when we pulled out would be manageable by the Iraqi Security  
15 Forces. And then with that accomplished, make a transition to the  
16 responsible drawdown of our forces in theater and make a transition  
17 to Operation New Dawn.

18 Q. And, sir, in a general and in an unclassified manner, what  
19 was the general nature of the threat against the brigade in Iraq at  
20 the time?

21 A. There were certainly still a threat there. Not quite the  
22 volume that I had experienced in the previous deployment, but we  
23 were, for example, still taking indirect fire attacks within the city



1 on a regular basis, you know, several per week, both in and outside  
2 the city, still hitting IEDs roughly on a daily basis or every couple  
3 days or so, and periodic direct fire attacks.

4 Q. Sir, I'd like to now focus or have you focus on the first  
5 of the major missions you just spoke about, the training of Iraqis.  
6 For that mission, sir, what was the main effort for your brigade  
7 staff?

8 A. For the staff, the focus was on help with partnering with  
9 our Iraqi partners and helping them build their staff capacity. That  
10 is, the planning and synchronization oversight of their operation. We  
11 were partnered with two Iraqi divisions, First Federal Police and the  
12 9th Iraqi Army, and also with a Corps level or equivalent  
13 headquarters, the Rasafa Area Command a three star headquarters in  
14 eastern Baghdad. So we worked with them on their skills of military  
15 decision making process, intelligent preparation of battle field, and  
16 synchronization of operations in time and space. So for my staff  
17 that's what their decisive action was.

18 Q. Now, sir, was that the decisive action for your staff while  
19 they were also working as your staff?

20 A. Absolutely.

21 Q. And how did that occur, sir?

22 A. Well, so they spent -- the staff principals spent most of  
23 their time partnered with their counterparts on those three different

1 headquarters, so you can imagine that was a pretty time intensive  
2 piece. So most of their daytime operation were with their staff  
3 counterpart. And then the routine tasks and actions that were  
4 required to keep the brigade running, if you will, were done at  
5 night, as well as other staff planning and actions that took a little  
6 bit more time and uninterrupted concentration.

7 Q. Sir, how many Soldiers did you have in your brigade?

8 A. We had about 4,000, deployed Soldiers.

9 Q. And how many Iraqis was the brigade partnered up with to  
10 train overall?

11 A. I'm going to estimate about 10,000 or so.

12 Q. Sir, now I'd like to ask you a few questions about what you  
13 earlier testified about the second mission, the responsible drawdown.  
14 What do you mean by the -- What did you mean by the responsible  
15 drawdown of your brigade?

16 A. Well, responsible is the keyword, that we wanted to hand  
17 over the fight to a capable Iraqi force, and that the transition  
18 period needed to be smooth, seamless and transparent to the  
19 population, meaning no drop in security while it was occurring so  
20 that their day-to-day lives went on uninterrupted without major  
21 change or turmoil. So to do that, it's a pretty complex operation  
22 with a number of simultaneous actions happening together. First, we  
23 had to physically hand over the 18 or so outposts that we owned to

1 our Iraqi counterparts, if they wanted them, and that was both a  
2 physical property turnover and a physical ownership that had to be  
3 overseen by the Iraqi Minister of Interior. It's a very deliberate  
4 process. Simultaneous with that and probably more important was  
5 transfer of authority for security of those areas surrounding those  
6 outposts to our Iraqi counterparts. Part of that was a strategic  
7 communications effort to broadcast that across the local area so that  
8 the population knew this was occurring. And there's a large  
9 ceremonial piece that went with that to make sure it was known  
10 publicly and that they could get credit or could get the credit they  
11 were due for taking that ownership very celebrated by the Iraqi  
12 people in the local areas. While that was happening, we also had to  
13 turn in all the theater-owned equipment that had built up over the  
14 past 10 years of having been in country, turned that into central  
15 locations for eventual shipment back to Kuwait, and eventual shipment  
16 back to the continental U.S. Along with that, we had to prepare our  
17 own equipment for shipping back to Fort Drum and other places that  
18 attachments came from and the planning of our normal redeployment  
19 activities that any other unit now would do.

20 Q. Sir, when was the decision point on when to shift your main  
21 focus and effort to the responsible drawdown from training Iraqis?

22 A. Right. We had a decision point, the elections were held  
23 late February, early March.

1 Q. I'm sorry, sir. What elections?

2 A. The Iraqi Government elections were held in that time  
3 period and we had a decision point a few weeks after that to  
4 determine whether or not we had met the conditions, meaning Iraqi  
5 Security Forces were competent enough and population stable enough to  
6 make the transition in priority of work from those two tasks to the  
7 drawdown of our forces in theater.

8 Q. Sir, did the drawdown mission begin concurrent with the  
9 training mission, also?

10 A. Yes.

11 Q. And was that -- What was the focus of your brigade staff  
12 during this time for the whole deployment then?

13 A. It remained on capacity capability for those three staffs  
14 that I mentioned and their Iraqi counterparts.

15 Q. And, sir, which BCT was the first to drawdown in Iraq?

16 A. Our brigade was the first brigade to begin responsible  
17 drawdown and initiate the transition to Operation New Dawn.

18 Q. Sir, what major challenges did the brigade face with such a  
19 diverse mission?

20 A. One was just the diversity of the mission required a lot of  
21 intellectual energy going in a lot of different directions. There  
22 was the physical dispersement of the force which was a challenge, but  
23 not insurmountable from a command and control standpoint and we had a

1 challenge with our communications network being able to physically  
2 cover the territory that we were operating in. So we pretty much had  
3 the commo network pretty much stretched to its limits for the systems  
4 that we had to use.

5 Q. And, sir, with reference to communication, what specific  
6 type of problems did you have?

7 A. The biggest ones for myself and support unit was  
8 connectivity, essentially during key times like commander updates,  
9 brigade to division, brigade to battalions, and laterally.

10 Q. And, sir, when you talk about networks and communication,  
11 what networks and types of communications are you talking about?

12 A. My late brain. I was talking about all commo, whether it  
13 be FM communications, secure voice, Internet, email traffic, all  
14 secure networks, VTCs, teleconferences, all of it.

15 Q. Sir, did that include the use or having connectivity of  
16 SIPRNET?

17 A. Yes.

18 Q. And how important, if at all, sir, was SIPRNET to the  
19 brigade's mission?

20 A. It was critical.

21 Q. Why, sir?

1       A.    SIPRNET is the primary means of communicating in theater,  
2 not just for our brigade, but for everybody. So almost everything we  
3 do or did was over SIPR.

4       Q.    SIPR, how often did you personally use SIPRNET in theater?

5       A.    All the time, every day.

6       Q.    How often did your brigade staff use SIPRNET in theater?

7       A.    The same, all the time.

8       Q.    What about junior staff?

9       A.    Same.

10      Q.    Sir, did most junior staff have NIPR computers with access?

11      A.    No, not directly. If they did, it would be one computer  
12 per X number of Soldiers that they could get to if they needed to.

13      Q.    And why is that, sir?

14      A.    As I mentioned, really no need. I mean 99.9999 percent of  
15 activity was done on SIPR side, so that was, SIPR was as normal in  
16 theater as NIPR is in the garrison.

17      Q.    Sir, how often did your staff leave FOB Hammer?

18      A.    Primary staff, the principals, the S-1, the S-2, the S-3,  
19 the 4, on a regular basis out of a course of a week to do their  
20 engagements with their Iraqi counterparts.

21      Q.    And then how often then did junior Soldiers on your command  
22 leave FOB Hammer?

23      A.    Seldom to never.

1 Q. Sir, what concerns did you have for Soldiers who never left  
2 the FOB?

3 A. Getting stuck in what we would call a Fobbit rut.

4 Q. What do you mean by that, sir?

5 A. Well, I mean if you're on a FOB and you're never leaving  
6 the wire, then things -- and your job is tied to a computer screen on  
7 a daily basis, you know, your mental edge or intellectual energy, if  
8 you will, can kind of start to get greyed out to an extent. So  
9 getting stuck in a rut, in a routine, and getting stuck in a mundane,  
10 you know, battle rhythm could cause you to lose focus, concentration  
11 and, you know, that alertness that goes with staying on your game.

12 Q. Sir, when you were at FOB Hammer, did you know that  
13 Soldiers had played music, movies and games on SIPRNET?

14 A. I had an awareness in the periphery of my mind that folks  
15 were listening to music and that kind of thing on systems.

16 Q. And, sir, since it was, you said awareness as you said in  
17 the periphery of your mind, why was having movies, music and games on  
18 SIPRNET not a concern for you?

19 A. There wasn't anything about that that had anything to do  
20 with any kind of impact on the mission at hand and the operational  
21 effectiveness of those Soldiers doing their day-to-day jobs.

22 Q. Was there a benefit, sir, to having that on SIPRNET?

1       A.   Well, I would say that there's a benefit to anybody who's  
2 got a job that keeps them in one work space in a cubicle working on a  
3 computer to have something like music, a periodic interruption of a  
4 game, whether it be solitaire or whatever, to break the monotony of  
5 what they're doing as part of their normal operations. Not unlike a  
6 college student studying for exams may be listening to music while  
7 they're studying, or if you go in the dentist office and you're  
8 getting your teeth worked on the hygienist has a radio playing in  
9 the backdrop while they're doing their job. I think that there's  
10 some value probably to that.

11       Q.   Sir, at any point during your brigade's deployment, did the  
12 amount of information on the SIPRNET, the amount become a problem?

13       A.   We believed so, yes.

14       Q.   And what was the problem, sir?

15       A.   Well, I don't remember the exact timeframe, probably  
16 January or so, we were having these problems maintaining  
17 connectivity. For example, during the division update briefs when  
18 all the brigade commanders were on the net communicating their  
19 analysis of what had transpired the previous week with the division  
20 commander and we would frequently get dropped off the net during  
21 those time periods. So I had turned to my XO, and staff and said,  
22 hey we got to figure out why this is happening and what can we do to  
23 get this working right. We didn't want to have interruptions during



1 that time period, or when UAV feeds were coming in during specific  
2 operations or that kind of thing. When they came back to me, part of  
3 the issue was we had a bandwidth management challenge that was part  
4 of the cause for this, and so part of the problem with that, as I  
5 understood it, was too much stuff on the net at any given time, and  
6 that was causing the drops that were occurring as it was explained to  
7 me. So that was a problem that we were faced with.

8 Q. So, sir, what I guess remedial measures did you direct in  
9 order to fix that problem?

10 A. Well, based on the recommendations, I asked the staff what  
11 could we do. Some of those things were limiting access during key  
12 times, so putting in protocols that would say, hey, only these things  
13 can be running during this time to maintain minimal connectivity and  
14 allow for the main event like an update brief with the CG or UAV feed  
15 during a key operation to not get disrupted. Taking a look at  
16 systems that weren't being used very frequently and taking them off  
17 the net permanently. Eliminating generic user names like tactical  
18 operations center battle captain so that not anybody could jump in  
19 there with that user word and use it for something other than its  
20 designed intent for the mission. Things of that nature.

21 Q. Sir, was any of these remedial measures that you ordered,  
22 were any of them done for security reasons?

1       A.    No. We were looking at this from a network connectivity  
2 standpoint, that was the problem at hand.

3       Q.    And, sir, are you familiar with the program WGet?

4       A.    I am familiar with it now.

5       Q.    What do you mean by that, sir?

6       A.    I wasn't aware of it at all during our time in theater.  
7 Since this entire security breach occurred and learning about that as  
8 part of in the aftermath I learned what it is.

9       Q.    So because of this case we're here today for, sir, you  
10 learned about it?

11      A.    Right.

12      Q.    Sir, are you familiar with mIRC chat?

13      A.    I am.

14      Q.    And what is mIRC chat?

15      A.    It's a system that we've been using and we were using at  
16 the time that allows collaboration within a network, in our case,  
17 between division brigade and battalion staffs, so that you can  
18 communicate vertically and horizontally. Significant to us  
19 simultaneously because that enables collaboration which is at the  
20 heart of mission command.

21      Q.    Sir, did your staff use mIRC chat deployed in Iraq?

22      A.    Yes.

23      Q.    Did the division use mIRC chat?

1       A.    Yes.

2       Q.    Sir, what was the benefit of mIRC chat?

3       A.    Like I said, it allowed collaboration.  There's two reasons  
4 why that's so important.  In its most immediate needs -- by way of  
5 example, a combat patrol hits an IED, makes an IED strike, so now all  
6 the react to contact rules go into play.  Without mIRC chat that  
7 report of the IED hit could come up in a single channel, let's say  
8 it's to a platoon to a company to a battalion to brigade to division.  
9 If they need a med-evac, that same request goes up those single  
10 channels.  If they need reinforcing fire, attack aviation or something  
11 like that, same thing, that request goes up through those channels,  
12 gets approved or cleared at each level, and then it comes back down.  
13 If they need an EOD team, same thing.  That all takes time.  And when  
14 you're in a fight, time is critical.  With chat, that information  
15 goes to everybody, same time.  So the division staff knows,  
16 battalion, brigade, battalion staff, commanders are aware if they're  
17 tracking and so the request for med-evac goes through  
18 instantaneously.  EOD goes right away.  Plus from a commander  
19 standpoint everybody's got situational awareness.  So other combat  
20 patrols in the area, if they've got to alert around it, not get  
21 bogged down in that bottleneck, they can do it.  If there's a quick  
22 reaction force that need to be put on alert or get launched it can

1 all happen in a fraction of the time it would have taken without a  
2 system like mIRC chat.

3 Q. Sir, when did your brigade start using mIRC chat?

4 A. From the time we got on the ground.

5 Q. How do you know that, sir?

6 A. We picked it up from the unit that we were replacing about  
7 part of our relief in place.

8 Q. And what unit was that?

9 A. 3rd Brigade of the 82nd.

10 Q. And why did you use it just because 3/82 was using it?

11 A. Well, it wasn't just because 3/82 was using it. It really  
12 was because that was the method -- system that was being used in  
13 theater in U.S. Division Center at the time. So to be compatible  
14 with everybody else in theater, you're going to use the systems at  
15 play.

16 Q. So now I'd like to ask you a few questions about your  
17 brigade headquarters and the TOC and the S-2 SCIF area. Where was  
18 your office located at FOB Hammer?

19 A. My office itself was on FOB Hammer inside the brigade  
20 headquarters.

21 Q. And, sir, could you please describe the building or tent?  
22 What type of infrastructure or ----

1           A.    Yeah.  So we had hard stand, hard structure building inside  
2 the FOB that was the brigade headquarters.

3           Q.    And, sir, where was the S-2 SCIF office located?

4           A.    Same building with the brigade headquarters, so my office,  
5 the brigade tactical operations center itself and all the staff  
6 functions were all inside that one building.

7           Q.    And, sir, could you briefly describe for the Court how one  
8 would walk in from the front of your brigade headquarters and get to  
9 the SCIF?

10          A.    Sure.  So -- excuse me.  You'd come in the main entrance  
11 which was pretty much center mass of the building.  The first thing  
12 you'd come to was a small guard stand if you will.

13          MJ:  I'm sorry.

14          WIT:  Like a desk about the size of what I'm sitting in front of  
15 you which is where we had a spot for a security post.

16          Q.    Sir, were there guards that were manning that post?

17          A.    Only at night.

18          Q.    And why, sir?

19          A.    One, that was low manning -- low personnel manning time  
20 period, so there wasn't as many people in the building to check who  
21 was coming in and out.  Because of the battle rhythm of daytime  
22 operations I talked about, the volume of folks that were around to

1 see who was coming in and out was ample, we thought, to check folks  
2 that didn't have normal day-to-day business inside the headquarters.

3 Q. Sir, for someone to walk in when there was a guard, was  
4 there a challenge password in place? How did you verify to get past  
5 the guards?

6 A. Good to use the analogy of challenge and passwords. Just  
7 like you would do for regular challenging passwords, if the guard  
8 recognized the person that was there and recognized that they were  
9 part of the organization, there was no challenge, just visual  
10 identification, you're good to go.

11 Q. When you say the organization, sir, is it your whole  
12 brigade, is it your staff?

13 A. The staff or anybody who had normal duties within there or  
14 reason to be there like a battalion commander, battalion sergeant  
15 major, folks like that. If not, then they asked them what they  
16 needed and where did they need to do go, and then they'd get somebody  
17 from the appropriate staff and they'd come in and out.

18 Q. I interrupted you, sir, I apologize. You were talking  
19 about once you walked past the guard station.

20 A. Yeah. The tactical operation center was just past that  
21 where the operation sergeant major and the key folks were. And then  
22 there was a hallway where the rest of the staff agencies were

1 located. As I recall, the last offices on that particular hallway  
2 was the brigade S-2 shop.

3 Q. Now, sir, when you would walk up to the brigade S-2 shop,  
4 could you just walk in the door?

5 A. No. It was cypher lock secured and you had to have access  
6 to the cypher lock to get in, into the shop.

7 Q. And did you have access to that?

8 A. I did not.

9 Q. And what office of individuals were the ones that had  
10 access?

11 A. The S-2.

12 Q. And was an individual allowed to go into the S-2 office  
13 without an escort?

14 A. Not to my knowledge, no.

15 Q. Sir, when did you first find out about PFC Manning's at the  
16 time alleged misconduct?

17 A. I don't remember the date, but the way it came about to me  
18 was I was coming back from dinner or something like that one evening  
19 and I was approached by either my XO or my DCO and they told me that  
20 we had been instructed to secure Manning and his computer and he was  
21 being -- agencies were coming to pick him up and take him away.

22 Q. And, sir, what was your understanding of the nature of the  
23 misconduct at that time?

1       A.    At that time I didn't have any idea.

2       Q.    And then what was your understanding once you were briefed

3 and understood what it was?

4       A.    I had a general understanding that he had pulled classified

5 information from ----

6       CDC[MR. COOMBS]:    Objection, Your Honor.

7       MJ:    Yes.

8       CDC[MR. COOMBS]:    Hearsay and relevance.

9       MJ:    What is the non-hearsay purpose?

10      TC[MAJ FEIN]:   Well, the effect on listener, Your Honor.

11      MJ:    What is -- Where are you going with that?

12      TC[MAJ FEIN]:   Ma'am, it goes ultimately to prejudice of good

13 order and discipline and service discredited, to proving -- providing

14 facts to prove it was both prejudicial to good order and discipline

15 and service discrediting some of the acts that have not been pled

16 guilty to, Your Honor.

17      MJ:    Why don't you just say after you were briefed in your

18 questions.

19      TC[MAJ FEIN]:   Yes, ma'am.

20      MJ:    Sustained.

21      CDC[MR. COOMBS]:    Your Honor, just ----

22      MJ:    Sustained on hearsay, not on relevance.



1 CDC[MR. COOMBS]: Yes, Your Honor. Just for the defenses  
2 purpose on the relevance, we believe that the relevant conduct for  
3 prejudicial order or discipline would be the direct acts, not any  
4 government acts after that. So I'm not for sure where Major Fein  
5 will be going, but the direct acts would be relevant under 134, under  
6 that, so ----

7 MJ: Why don't we let him go and get there, and if it's not for  
8 proper purpose I can disregard it.

9 CDC[MR. COOMBS]: Yes, Your Honor.

10 MJ: Go ahead.

11 Q. Sir, how did you react when you first found out about PFC  
12 Manning's at the time alleged misconduct?

13 A. I was stunned.

14 Q. Why, sir?

15 A. The last thing I anticipated was an internal security  
16 breach from one of our own.

17 Q. Sir, were you ever in a meeting with your brigade staff  
18 that the alleged misconduct was discussed?

19 A. Yes.

20 Q. And what was your reaction based off of those discussions  
21 during your brigade staff meetings?

22 A. After I got past my initial reaction, I pulled the staff  
23 together because I wanted to do an internal look to determine what if

1 anything we had or had not done that may have led to the ability for  
2 this to occur, so we could do some self-correcting and move forward  
3 if we needed to. As part of that I described from my personnel what  
4 I thought had happened. My read of my staff at that time was it was  
5 like a funeral-like atmosphere fell over that crowd, that's the best  
6 way I can describe it. They were angry, sad, grief, frustrated, all  
7 at the same time. That's how I would describe it.

8 Q. Sir, before you learned of PFC Manning's at the time  
9 alleged misconduct, how would you describe the overall morale of your  
10 staff and brigade?

11 A. So probably one of the highest points I had been on in my  
12 entire command duration, and that's, that's because we had really hit  
13 all of our objectives and our conditions for meeting the mission  
14 requirements. You had asked and I had mentioned that we were the BCT  
15 identified to begin responsible drawdown. That didn't happen by  
16 accident. A lot of work went into achieving those objectives and  
17 being able to brief General Odinero that we were ready. That was in  
18 large part through the achievements of the staff and the subordinate  
19 units. So they were feeling very good about that. The Iraqi  
20 population was cooperating with each other, things were moving in the  
21 right direction with their own unity efforts. The Security Forces  
22 were reaching a high point in their own performance. All those

1 things were occurring. And then out of the blue we had this incident  
2 occur.

3 Q. So, sir, once you and the brigade staff learned of PFC  
4 Manning's then alleged misconduct, how would you describe the morale  
5 of the brigade?

6 A. It took a hit. We had all those good things going and, to  
7 put it in context, you know, this was the beginning of the drawdown,  
8 so I had a large number of, probably 50 percent of the force that had  
9 anywhere from two to six deployments in theater before that, so what  
10 they were seeing is the fruits of their labor over the past 10 years  
11 coming to fruition and feeling pretty good about it. So all that  
12 energy and effort and sacrifice that had gone into it was coming to a  
13 completion. And then we had this incident occur, which the unit  
14 collectively felt was like a blemish on its otherwise pretty stalwart  
15 record. Not to mention what it does to trust to a large degree in a  
16 formation.

17 Q. What do you mean by that, sir?

18 A. Well, earlier I made an analogy to security breach. In  
19 this case it was cyber security. But to my Infantryman's way of  
20 looking at things, trust is critical to, it's at the foundation of  
21 everything we do. So if you're in a combat patrol, you got a lead  
22 helmet with front security, you got a trail helmet with trail  
23 security, and you got left and right flank security. Every Soldier

1 in that formation knows that the other Soldier's got their piece of  
2 the security. They know it in their blood and in their -- in the  
3 fiber of their body. And that trust, that that's true, is crucial to  
4 them staying focused on their part of the security piece. It is  
5 interwoven and relies upon each other, just that mutual knowledge  
6 that I got you, you got me. That's how we roll. If any one of those  
7 violates that, now that Soldier with the lead security is looking to  
8 his left and going is there a gap in security over here? I'm taking  
9 my eyes off my job, I'm putting it over here. And the whole thing  
10 starts to unravel. And so that's a simple example, but the analogy  
11 is true in every echelon of command. That notion is what hit at the  
12 morale and for at least a while the operational effectiveness of the  
13 formation.

14 TC[MAJ FEIN]: Thank you, sir. Your Honor, no further  
15 questions.

16 MJ: Cross-examination.

17 CDC[MR. COOMBS]: Yes, Your Honor. If we could, could we have  
18 a 10-minute comfort break?

19 MJ: All right. Why don't we make it 15? We'll be in recess  
20 until 5 minutes after 12.

21 Once again, during the recess, please don't discuss your  
22 testimony or knowledge of the case with anyone.

23 WIT: Yes, ma'am.

1 MJ: Thank you.

2 [The court-martial recessed at 1158, 28 June 2013.]

3 [The court-martial was called to order at 1211, 28 June 2013.]

4 MJ: Court is called to order. Let the record reflect all  
5 parties present when the Court last recessed are again present in  
6 court. The witness is on the witness stand and Mr. Coombs is at the  
7 lectern.

8 CDC[MR. COOMBS]: Thank you, ma'am.

9 **CROSS-EXAMINATION**

10 **Questions by the civilian defense counsel [MR. COOMBS]:**

11 Q. Colonel Miller, I want to begin by talking about the  
12 connectivity problems that you had during the deployment, okay?

13 A. Okay.

14 Q. Now, during the deployment you started having connectivity  
15 problems with your weekly updates to Major General Wolfe. Is that  
16 correct?

17 A. Yes.

18 Q. And Major General Wolfe was the Division Commander?

19 A. Correct.

20 Q. And it was during this time you found out that the loss of  
21 connectivity was due to unauthorized data on the system?

22 A. No.

23 Q. Is that what your testimony is right now?

1           A.    That I understood that there was a volume of stuff on the  
2 network that was causing part of the problem, so the data, authorized  
3 or unauthorized, was part of that problem.

4           Q.    All right.  So ----

5           A.    So all I'm saying it wasn't solely because of that.

6           Q.    All right.  So let me make sure I understand your answer.  
7 During this time period when you were having connectivity problems,  
8 you found out that part of the problem was due to unauthorized data  
9 being on the system?

10          A.    Yeah, that it was contributing to the volume of stuff that  
11 was on the system which was causing the problem as I understood.

12          Q.    And specifically it was unauthorized data?

13          A.    Can you ask that again?

14          Q.    Yes.  Specifically when you were talking about data, you  
15 were made aware that there was unauthorized data on the system.

16          A.    As part of the larger data problem.  So, for example, UAV  
17 feeds are authorized data flow.  They take huge chunks of bandwidth.  
18 So that was part of the problem also.

19          Q.    Right.  But my question is you were specifically told that  
20 there was unauthorized data on the system?

21          A.    Yes.

22          Q.    And the person that basically addressed this issue for you,  
23 this unauthorized data, was Captain Cherepko?

1       A.    Yes.

2       Q.    And with regards to Captain Cherepko, it was your opinion  
3   that he was the only person really in the S-6 shop who had the skills  
4   necessary to fix this problem?

5       A.    Yeah, he certainly had the most capability, yeah.

6       Q.    And, you know, something obviously that could also have  
7   helped improve the connectivity problems that you were having was the  
8   removal of unauthorized media, correct?

9       A.    Yes.

10      Q.    So you could have, for example, insured that movies, music,  
11   games, executable files, those things that should not be on a SIPRNET  
12   system were removed?

13      A.    Yes.

14      Q.    Because they were taking up a lot of space?

15      A.    I don't know how much space they took up.

16      Q.    Did Captain Cherepko ever come to you to inform you that  
17   unauthorized media was taking up a lot of space?

18      A.    No.

19      Q.    Did he ever inform you about the problem of unauthorized  
20   media on the T-drive?

21      A.    No.

1 Q. So to your knowledge, Captain Cherepko never came to you  
2 and said or through I guess who had been your XO, sir, we've got  
3 unauthorized media on the T-drive and that's causing us a problem?

4 A. The XO, Brian Kerns, came to me with here's what we found  
5 is lending itself to the problem that we're having.

6 Q. All right. So whether it be through Captain Cherepko,  
7 Lieutenant Colonel Kerns, were you made aware that there was  
8 unauthorized music, movies and games on the shared drive?

9 A. Yes.

10 Q. And based upon being made aware of that, what direction did  
11 you give?

12 A. I told them to clean it up as part of their overall efforts  
13 to and other steps they were taking to get the connectivity working  
14 again.

15 Q. And was it just the direction that you just said there, to  
16 clean it up, or did you actually give specific directions?

17 A. I didn't give specific guidance.

18 MJ: Can I interrupt you for a second?

19 CDC[MR. COOMBS]: Sure.

20 MJ: You said you told them. Who is them?

21 WIT: So we had the XO, Brian Kerns was the guy who I had  
22 shepherding this entire staff effort because that's what he is, he's  
23 a chief of staff. So I don't remember if Cherepko was in the room,



1 who else was present, maybe Brian, maybe Cherepko, maybe the deputy,  
2 he may or may not have been present. But they came back and  
3 essentially said, this is -- these are the things we see lending  
4 itself to the problem. And we -- they had a recommendation for  
5 clearing some of that up. It included getting rid of the  
6 unauthorized media, it included, like I had mentioned, some other  
7 measures like taking certain systems off and adding to the protocols  
8 to control when things were being accessed when. So I said, yeah,  
9 let's get after that. And, again, I don't remember the exact laundry  
10 list of recommendations they had, but I was like, yes, let's do that.

11 Q. And when you gave the guidance to your staff basically to  
12 correct the problem, did you ever receive word back through your  
13 staff that the problem was, meaning that once it was removed it was  
14 getting placed back on the T-drive?

15 A. No, not that I recall, no.

16 Q. Did you ever get a requested brief back of your staff of  
17 now that I gave you the guidance to go correct it, come back to me by  
18 X date and tell me what you did and what your results were?

19 A. No, I don't think so.

20 Q. With regards to the problem, once you're aware of the  
21 problem, did the brigade ever conduct any training on what type of  
22 media a Soldier could and could not put on the shared drive?

23 A. Not formalized.

1 Q. And what do you mean by that?

2 A. There wasn't a class with a sign-in roster or that kind of  
3 thing.

4 Q. So was there any informal training done that you're aware  
5 of to tell Soldiers what they could and could not put on the shared  
6 drive?

7 A. I wouldn't classify it as training. I believe what  
8 happened was guidance was put out through staff challenges of what  
9 had to be cleaned up.

10 Q. All right. And when you say you believe, was that because  
11 you gave that directive or you just believe that might have been done  
12 based upon your initial directive of clean it up?

13 A. Because it was part of the initial guidance to take action.

14 Q. Okay. Do you know whether or not at any time during the  
15 deployment there was any sort of discussion on executable files,  
16 files that you could put on the shared drive or not?

17 A. No.

18 MJ: Does that mean you don't recall or there was none?

19 WIT: Ask the question again, please.

20 CDC[MR. COOMBS]: Yes.

21 Q. Do you know whether or not during the deployment there was  
22 ever any training on what executable files you could or could not  
23 place on the shared drive, the T-drive?

1           A.    I don't know. I don't know that we were in the business of  
2 putting files on drives, so ---

3           Q.    Saving stuff to the -- The T-drive was the shared drive,  
4 right?

5           A.    Right.

6           Q.    And Soldiers, any section could share, excuse me, save  
7 stuff to the T-drive?

8           A.    Right.

9           Q.    So do you know from the brigade standard whether or not  
10 there was any training or guidance given on executable files that you  
11 could or could not save on the shared drive?

12          A.    I don't know.

13          Q.    Now, during the deployment, were you ever informed that  
14 there was unauthorized media within the T-SCIF?

15          A.    No.

16          Q.    Did you later learn that there was unauthorized media in  
17 the T-SCIF?

18          A.    No.

19          Q.    So from your standpoint, even today I guess, you didn't  
20 know whether or not there was unauthorized media on your T-SCIF?

21          A.    Well, actually today I can say no, not for sure, I presume  
22 just part of the overall read that we had unauthorized media, I

1 didn't discount or include the T-SCIF in the read, so I wasn't sure  
2 aware of anything in the T-SCIF.

3 Q. The reason why I ask is my understanding is like when you  
4 go in to kind of like where the TOC was and the T-SCIF, the T-SCIF  
5 had a cypher lock to it, right?

6 A. Correct.

7 Q. So that was, would you agree with me, a much more secure  
8 area than maybe the TOC because of the cypher lock?

9 A. Access-wise, yeah.

10 Q. And also access-wise it was much more limited as to who  
11 could go into the T-SCIF?

12 A. True.

13 Q. So you would want to be, I guess that's because you're very  
14 concerned on who goes into the T-SCIF and what happens in the T-SCIF?

15 A. Yep, certainly who goes in.

16 Q. And then also the information that you have in the T-SCIF  
17 you're concerned about?

18 A. Yeah.

19 Q. So were you ever made aware that Soldiers in the T-SCIF had  
20 unauthorized media like movies, music and games?

21 A. No.

1 Q. And when you talked about I guess the, in your term it was  
2 the Fobbit where if you never go anywhere, you kind of go a little  
3 stir crazy just being on the FOB, was your ----

4 MJ: Let the record reflect the witness is nodding his head.

5 CDC[MR. COOMBS]: I'm sorry. Thank you, ma'am.

6 Q. Was your guidance to combat that in the T-SCIF you would  
7 allow music, movies and games on a SIPRNET computer?

8 A. No.

9 Q. And if you were made aware of that, sir, would you have put  
10 a stop to that practice?

11 A. I don't know. Not necessarily.

12 Q. And why not?

13 A. For the same reasons I just described, that I thought  
14 there's some degree of benefit to those kind of luxuries, if you want  
15 to call it that. I don't see immediately as a layman the operational  
16 problem with that.

17 Q. And if your S-6, Captain Cherepko, came to you, assistant  
18 S-6 actually, came to you and said, sir, the problem with that is the  
19 music, movies, games, or the executable files are a security risk,  
20 they should not be on the SIPRNET computer, if you received that  
21 guidance, would you then not want to have that stuff on the SIPRNET  
22 computer?

1       A.    Yes.  And or I would have wanted to peel that onion further  
2 back and determine exactly what the nature of the security risk is,  
3 and then decide whether or not I wanted to challenge that and run a  
4 waiver on it through the green tab channels to determine whether it  
5 was really a risk or not.  Because sometimes these risks -- the  
6 reason given for it's not authorized is because there's a document  
7 that says this is not authorized and therefore it's a risk.  What I  
8 always want to get to is why, not the document, but what was the  
9 logic behind that being put in that document so I can get to the root  
10 reason.  Then we can assess the root reason against what we're doing  
11 and find if there really is a physical threat or not.  But either way  
12 I would want to run it on ground and get permission or not.

13       Q.    If your S-6 said, hey, this stuff is a security risk  
14 because it opens up our network to outside intrusion and you ran that  
15 to ground and that was true, then I imagine you would not allow that  
16 in your T-SCIF?

17       A.    Correct.

18       Q.    And if the S-6 said, hey, the same thing, that this is a  
19 problem because it opens up our network to outside individuals, and  
20 you ran that to ground and that wasn't true, that was just an S-6  
21 being an S-6 being too concerned, but the reality was there was no  
22 problem, what would you do in that situation, sir?

23       A.    But it was still a policy or regulatory unapproved?

1 Q. Yes, sir.

2 A. Then I would want to run it back up through division to see  
3 if we couldn't get an exception, if there was operational benefit  
4 that was worth the energy to do that, then I may have wanted to look  
5 into it to see if we could get a waiver.

6 Q. And did you ever do that, to your knowledge?

7 A. No.

8 Q. Ask for a waiver?

9 A. No, I did not.

10 Q. Would that apply and -- you talked about the mIRC chat  
11 program, right? You're familiar with that, sir?

12 A. Yes.

13 Q. And did you ever ask for a waiver to have the mIRC chat  
14 program put on the DCGS-A computer at your S-2 section?

15 A. No.

16 Q. Now, you talked about also having SIPRNET and you used it  
17 all of the day, correct?

18 A. All the time, yeah.

19 Q. All the time. And my understanding also, having been  
20 deployed, that SIPRNET becomes basically your everyday computer that  
21 you're using. Is that right?

22 A. I would agree with that, yeah.

1 Q. And that's how, you know, Soldiers communicate with one  
2 another and that's basically what they work on on a daily basis. Is  
3 that correct?

4 A. Yeah, it's like I described in my earlier statement. To me  
5 the analogy would be it is as normal as using the computers you're  
6 using here as part of this process, just make them SIPR, same thing.

7 Q. And, sir, how many people do you remember, and I'm not  
8 trying to give you like a hard number where you're like, oh, 3,400,  
9 but what percentage of your brigade do you think had access to  
10 SIPRNET?

11 A. I'm going to say, 20 percent. What I'm really thinking  
12 about is it's a really a breakdown. Staffs had access. The  
13 preponderance of my force were trigger pulling Soldiers, most of  
14 those Soldiers did not. So company level, below, very, very little.  
15 Battalion staff level functions, quite a bit.

16 Q. And when you're talking the battalion staff, the people who  
17 were probably for the most part the Fobbits, correct?

18 A. Correct.

19 Q. What percentage of the battalion staff and brigade staff do  
20 you believe had access to SIPRNET?

21 A. The majority.



1 Q. And with regards to SIPRNET, from your knowledge, did you  
2 know that you could go to the Net-Centric Diplomacy database on  
3 SIPRNET?

4 A. Say that again.

5 Q. Did you know that you could go to the Net-Centric Diplomacy  
6 database on SIPRNET?

7 A. No, I didn't.

8 Q. Do you recall ever asking your S-2 at the time, Captain  
9 Lim, to start incorporating guidance, information from the cables  
10 into their work products?

11 A. No.

12 Q. With regards to the SIPRNET, do you know if your brigade  
13 conducted any training on where a Soldier could or could not go on  
14 the SIPRNET?

15 A. No, I do not.

16 Q. Do you know if your brigade put out any restrictions on  
17 what a Soldier could or could not look at on the SIPRNET?

18 A. No.

19 Q. When we talk about kind of the Fobbit mentality and using  
20 basically SIPRNET as your everyday Internet, if a Soldier wanted to,  
21 if they were just otherwise kind of not doing anything and they just  
22 wanted to surf the SIPRNET, was that something that your brigade put  
23 a restriction on?

1           A.    Not that I recall.

2           Q.    So if I were Private Coombs and I'm on my SIPRNET machine  
3 and you walked by and you said, Private Coombs, what are you up to,  
4 and I say, hey, sir, nothing, it's kind of a slow day, I'm just  
5 surfing the SIPRNET, that would not be a problem in your eyes as a  
6 brigade commander?

7           A.    It wouldn't register as a problem to me.

8           Q.    Now, with regards to downloading stuff from the SIPRNET, do  
9 you know if your brigade put out any guidance or restrictions on what  
10 you could or could not download from the SIPRNET?

11          A.    Download to?

12          Q.    To a CD, say for example, that you appropriately labeled,  
13 or down to your SIPRNET machine.

14          A.    Yeah. So I don't recall any guidance on what could be  
15 downloaded to your machine. I don't remember when the guidance came  
16 out for not downloading to removable drives, whether that was before  
17 or after this time period, but that wasn't brigade guidance, that was  
18 Army guidance. I don't remember whether that fell within this, this  
19 timeframe or not. But downloading at some point, the Army said we're  
20 not doing that any more.

21          Q.    Sir, from your experience, and I know you were on SIPRNET,  
22 do you recall ever saving something that you got from SIPRNET on to  
23 your computer?

1           A.    I don't have a specific memory, but I probably did.

2           Q.    And do you know from the brigade level whether or not there

3 was any sort of restriction in the manner in which you saved

4 information? If you decided I want to save something from the SIPRNET

5 that there was a restriction on the manner in saving that

6 information?

7           A.    Manner like how you click on something and select save and

8 ----

9           Q.    Right.

10          A.    No.

11          Q.    Now, I want to ask you a few questions about PFC Manning.

12 You talked about the fact that you met him before. Is that correct,

13 sir?

14          A.    As I described earlier, yeah.

15          Q.    And that was basically him conducting a brief in front of

16 you?

17          A.    And the other staff and some commanders, yes.

18          Q.    And, sir, was that before the deployment or was that during

19 the deployment?

20          A.    Before.

21          Q.    And based upon what you saw, do you recall saying you

22 thought he was a sharp briefer?

23          A.    Yes.

1 Q. And even though you thought he was a sharp briefer, you  
2 also, do you recall saying that you believed that he wasn't  
3 experienced at analysis?

4 A. I don't recall saying that, but ----

5 Q. Would anything help refresh your memory?

6 A. Well, if in the context of the briefings, the briefings  
7 weren't really about analysis, they were about here's the situation  
8 that's taking place, so there wasn't a lot of analysis that would go  
9 into it. So I may have said that, but, yeah.

10 Q. And it's okay because this was a long time ago, you know.  
11 Do you recall saying he was not experienced at analysis, but he was  
12 fine in making presentations?

13 A. Yes.

14 Q. Okay. And even though he wasn't experienced at analysis,  
15 you would agree with me that that might be just because he was a  
16 junior enlisted Soldier at that time?

17 A. Sure.

18 Q. He was a young Soldier?

19 A. Yeah.

20 CDC[MR. COOMBS]: Sir, thank you. I don't have any further  
21 questions for you.

22 WIT: Okay.

23 MJ: Redirect?

1 TC[MAJ FEIN]: May I have a moment, Your Honor?

2 MJ: Yes.

3 TC[MAJ FEIN]: Yes, ma'am.

4 MJ: Go ahead.

5 **REDIRECT EXAMINATION**

6 **Questions by the trial counsel [MAJ FEIN]:**

7 Q. Sir, do you know what an executable file is?

8 A. Sort of.

9 Q. Okay, sir. What is it, in your knowledge of it, sir?

10 A. It's a file that provides some sort of function for off the  
11 hard drive.

12 MJ: I'm sorry. Can you say that one more time?

13 WIT: It provides some kind of function off of the hard drive.

14 Q. All right, sir. And Mr. Coombs just asked you a few  
15 questions about if you walked by a Soldier and saw a Soldier on  
16 SIPRNET doing some actions. I have a similar question, sir. If you  
17 were to walk by a Soldier in the SCIF on SIPRNET and saw a Soldier  
18 using a computer tool that he put on there to download over 250,000  
19 documents to burn on to a CD, would you have stopped that?

20 CDC[MR. COOMBS]: Objection. Argumentative.

21 MJ: Overruled.

22 Q. I'm sorry, sir. Could you please answer that?

23 A. Yes.

1 Q. And, sir, were Soldiers in your brigade authorized to burn  
2 CDs of classified information and use them for personal use?

3 A. No.

4 TC[MAJ FEIN]: Thank you, sir.

5 MJ: Any cross?

6 CDC[MR. COOMBS]: No, Your Honor.

7 MJ: Temporary or permanent excusal?

8 TC[MAJ FEIN]: Temporary, Your Honor.

9 MJ: All right.

10 **[The witness was temporarily excused, duly warned, and withdrew from**  
11 **the courtroom.]**

12 TC[MAJ FEIN]: Ma'am, the United States recommends that we take  
13 a lunch recess now and an extended one in order to finalize the last  
14 round of stipulations.

15 MJ: How long do you need?

16 TC[MAJ FEIN]: May I have a moment, Your Honor?

17 MJ: Yes.

18 TC[MAJ FEIN]: Ma'am, we plan on 1430 reconvening and we'll  
19 notify the Court and public if more time is needed between the  
20 parties.

21 MJ: All right. That works. Anything else before we recess?

22 TC[MAJ FEIN]: No, ma'am.

23 CDC[MR. COOMBS]: No, ma'am.

1 MJ: Court is in recess until 1430.

2 [The court-martial recessed at 1236, 28 June 2013.]

3 [The court-martial was called to order at 1444, 28 June 2013.]

4 MJ: The Court is called to order. Major Fein, please account

5 for the parties.

6 TC[MAJ FEIN]: Yes, ma'am. Your Honor, all parties when the

7 Court last recessed are again present with the exception of Captain

8 Whyte, who is absent.

9 MJ: All right. For the record, Counsel and I met in an R.C.M.

10 802 conference. And, once again, that is a conference where I meet

11 with counsel, we talk about logistics and scheduling issues that may

12 arise in cases. And counsel have advised me that they are currently

13 working on some additional stipulations of expected testimony, and

14 they have some other issues and witnesses that will go for a lengthy

15 period of time. So looking at the time that we have today, the

16 parties had come to an agreement, and the Court has approved that

17 agreement, that we are going to stop Court for today, let the parties

18 work out the issues they need to work out. And we will resume on

19 Monday morning at 0930. Is that an accurate description of the

20 R.C.M. 802 conference?

21 CDC[MR. COOMBS]: Yes, Your Honor.

22 TC[MAJ FEIN]: Yes, Your Honor.

23 MJ: Anything else we need to address at this point?

1 TC[MAJ FEIN]: There is one more administrative issue. I know  
2 there's confusion about that plan for next week over the 4th of July  
3 weekend. And the Court did adopt on the record the prosecution's  
4 proposed trial plan, which included not having Court on the July 3rd,  
5 4th and 5th. And if the Court could possibly confirm that publicly.

6 MJ: All right. Let me address that. Initially, I asked the  
7 parties and Government to come up with a trial plan, realizing that  
8 July 4th was going to be on a Thursday and the July 4th celebrations  
9 take up a lot of the Military District of Washington's logistics and  
10 administrative assets, several of which are devoted to this trial.  
11 So at that point early, this was before the trial started, the  
12 parties and I agreed that the assets were unavailable on Wednesday  
13 and Thursday and thus, that would only leave Friday. So we said  
14 there was no real point in coming back on Friday in between 2 days  
15 off and 2 other days off. So initially the plan was to come to  
16 court next Monday and next Tuesday and then come back on the 8th,  
17 July 8th. Then, we had modified that and we had come up with a  
18 tentative schedule that we were going to finish today and then not  
19 come back until Monday the 8th and start then. Based on the issues  
20 we need to address and the witnesses that we need to call, that plan  
21 is no longer feasible. Which is why we are going on the record on  
22 Monday. At this point the plan will be to finish on Monday.  
23 However, should we have too much to do and we need to go in on



1 Tuesday, we will. So the plan for next week is, we are definitely  
2 not going to be in session Wednesday, Thursday and Friday. We are  
3 going to be in session on Monday at 0930. Tuesday is up in the air  
4 right now. Anything further we need to address?

5 CDC[MR. COOMBS]: No, Your Honor.

6 TC[MAJ FEIN]: No, Your Honor.

7 MJ: All right. Court is in recess until 0930 on Monday.

8 **[The court-martial recessed at 1447, 28 June 2013.]**

9 **[END OF PAGE]**

10

1 [The court-martial was called to order at 0952, 1 July 2013.]

2 MJ: Court is called to order. Major Fein, please account for  
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am. All parties when the Court last  
5 recessed are again present with the following exceptions: Mr.  
6 Robertshaw, court reporter, is absent; Mr. Chavez, court reporter is  
7 present; and Captain von Elten is present.

8 MJ: All right. Are there any new exhibits that we have to add  
9 to the court record?

10 TC[MAJ FEIN]: Yes, ma'am. May I have a moment, Your Honor?

11 MJ: Yes.

12 TC[MAJ FEIN]: Ma'am, what has been marked as Appellate Exhibit  
13 585 is a letter from the United States to Mr. Christopher Butler with  
14 a subpoena attached ordering his presence this morning at 0700 to be  
15 a witness at this trial. What's been marked as Appellate Exhibit 586  
16 is a response from his attorney saying that he can comply, but can  
17 only comply the week of July 8th based off the sudden notice of  
18 receiving the letter on Friday, June 28th.

19 MJ: What is Appellate Exhibit 584?

20 TC[MAJ FEIN]: Your Honor, Appellate Exhibit 584 is the Court's  
21 ruling on government's motion to admit Prosecution Exhibits 31, 32  
22 and 109 for Identification.

23 MJ: Thank you.

1 TC[MAJ FEIN]: The rest are prosecution exhibits, Your Honor,  
2 that are going to be stipulations of fact and testimony that the  
3 Court will be going over in a moment.

4 MJ: All right. Before we address that, let's get back to these  
5 two appellate exhibits.

6 Counsel and I held a R.C.M. 802 conference just prior to  
7 coming on the record today where the government raised the fact that  
8 this subpoena had gone to Internet Archive and the email response.  
9 Defense, you had laid out your position basically on how the defense  
10 was going to go forward with respect to this issue. Would you like  
11 to set that forth for the record?

12 CDC[MR. COOMBS]: Yes, Your Honor. On Sunday we received  
13 notice of the subpoena for Mr. Butler. I spoke with Mr. Butler on  
14 the phone. He indicated to the defense that Internet Archive was  
15 actually contracted to capture the WikiLeaks website by Stanford  
16 University. Stanford University apparently had contracted with them  
17 to capture various websites that they believe were of historical  
18 significance, and WikiLeaks was one that was under a freedom of  
19 information type websites. Based upon that, I asked Mr. Butler to  
20 explain the process to me. He indicated that once they were  
21 contracted to do that, they would actually -- the organization  
22 themselves would pull the website on that particular date to preserve  
23 it, pursuant to the contract. I asked him to explain the actual

1 engineering, the technical aspect of how they did that. He was not  
2 an expert in that, but said he could get somebody from the  
3 organization that could explain that. My defense expert, Mr. Trent  
4 Struttman, then I contacted to have present here today. We intend  
5 to call Internet Archive over the lunch break. At that point my  
6 expert will talk with their expert, they'll do their technical  
7 conversation, and based upon that I believe they will indicate that  
8 it was, in fact, captured by Internet Archive on that date to the  
9 point that there would be no reasonable authentication objection. If  
10 that is the case, the defense would withdraw its authentication  
11 objection.

12 MJ: All right. So we won't know the actual results of that  
13 technical conversation until after lunch today.

14 CDC[MR. COOMBS]: Yes, Your Honor.

15 MJ: So we'll revisit that issue this afternoon and the concern  
16 with that will be the timing of the case, depending on if this  
17 witness isn't available until the week of the 8th, then we will have  
18 to postpone that piece of the government's case to those dates and  
19 decide how to proceed in light of having to do that. Should the  
20 authentication objection be withdrawn, then that will no longer be an  
21 issue before the Court. Is there anything else we need to address  
22 with respect to the subpoena and the response?

23 TC[MAJ FEIN]: No, Your Honor.

1 CDC[MR. COOMBS]: No, Your Honor.

2 MJ: Before we get into the stipulations of fact and expected  
3 testimony, would you, Major Fein, please give an accounting of the  
4 media operations center as well as the public?

5 TC[MAJ FEIN]: Yes, ma'am. This morning at the start of the  
6 trial, Your Honor, there was 15 members of the media at the  
7 operations center, one stenographer, there's no media in the  
8 courtroom, spectators in the courtroom, and there are five spectators  
9 in the overflow trailer. The rest of the trailer is still available  
10 if more show up.

11 MJ: I assume the theater is not being operational?

12 TC[MAJ FEIN]: It is not currently being used, ma'am.

13 MJ: Is there anything else we need to address before we get  
14 into the stipulations of fact and expected testimony?

15 TC[MAJ FEIN]: No, ma'am. But if we could have a brief recess  
16 in place for a second copy of the classified documents be retrieved  
17 out of the safe for PFC Manning to review.

18 MJ: That's fine. Court is in recess in place. If you want to  
19 stand up, move around, feel free to do that.

20 **[The court-martial recessed at 0957, 1 July 2013.]**

21 **[The court-martial was called to order at 1000, 1 July 2013.]**

1 MJ: Court is called to order. Let the record reflect all  
2 parties present when the Court last recessed are again present in  
3 court.

4 PFC Manning and Major Hurley are over in the panel box.  
5 And Major Fein, I'm sorry, what is coming in?

6 TC[MAJ FEIN]: Your Honor, Mr. Prather is currently out of the  
7 courtroom bringing in one last stipulation, but it's a stipulation of  
8 fact that the Court has already done a colloquy on and it's been  
9 remarked as Appellate Exhibit -- or excuse me, Prosecution Exhibit  
10 153 Alpha and 153 Bravo.

11 MJ: And this was the stipulation of fact regarding UBL?

12 TC[MAJ FEIN]: Yes, ma'am, Osama bin Laden.

13 MJ: All right. Major Hurley, my records indicate that I've  
14 already gone over this stipulation of fact with PFC Manning, however  
15 at the time I went over it, it was marked as an appellate exhibit,  
16 not a prosecution exhibit. My normal colloquy talks to PFC Manning  
17 about agreeing to this stipulation of fact as a stipulation of fact  
18 for use during the trial. Was that the defense's understanding as  
19 well?

20 ADC[MAJ HURLEY]: Yes, ma'am, that's my recollection of what  
21 has occurred up to this point with respect to the stipulation.

22 MJ: All right. So, even though it was admitted as an appellate  
23 exhibit it was the understanding of all parties that I was going over

1 this stipulation of fact with PFC Manning that this stipulation of  
2 fact at Appellate [sic] Exhibit 153 would be used at trial as well?

3 ADC[MAJ HURLEY]: Yes, ma'am. It would be considered by the  
4 trier of fact in making your determinations.

5 MJ: Government agree with that?

6 TC[MAJ FEIN]: Yes ma'am. Except for one correction, ma'am.  
7 It's Prosecution Exhibit 153 Alpha is the unclass redacted,  
8 Prosecution Exhibit 153 Bravo -- well, 153 Bravo for Identification  
9 is the classified. And the original appellate exhibit number is  
10 Appellate Exhibit Number 541.

11 MJ: Say that one more time.

12 TC[MAJ FEIN]: Yes, ma'am. The copy the Court has in front of  
13 her is what has been marked as Prosecution Exhibit 153 Alpha, the  
14 unclassified and redacted version, and that's Prosecution Exhibit 153  
15 Alpha for Identification. Prosecution Exhibit 153 Bravo for  
16 Identification is the classified version. Both of those have been  
17 previously marked as Appellate Exhibit 541.

18 MJ: All right. Thank you. Defense agree with that?

19 ADC[MAJ HURLEY]: Yes, ma'am. We only have the classified  
20 version here with us in the panel box.

21 MJ: PFC Manning, have you had a chance to take a look at that  
22 classified version of what's now Prosecution Exhibit 153 Bravo?

23 ACC: Yes, Your Honor.

1 MJ: Do you remember the colloquy that you and I went through  
2 with respect to that stipulation of fact?

3 ACC: Yes, ma'am.

4 MJ: Do you understand when we went through that colloquy that  
5 even though it was marked as an appellate exhibit that it was the  
6 intent of the parties and yourself that this would be used as a  
7 stipulation of fact during the trial?

8 ACC: That's correct, Your Honor.

9 MJ: Any reason from either of you that I need to go over this  
10 with PFC Manning again?

11 ADC[MAJ HURLEY]: No, ma'am.

12 TC[MAJ FEIN]: No, ma'am.

13 MJ: All right. PFC Manning, do you understand what this  
14 stipulation of fact is to be used for?

15 ACC: What was that, ma'am?

16 MJ: Do you understand what this stipulation of fact is to be  
17 used for?

18 ACC: Yes, Your Honor.

19 MJ: Apparently we have four new -- one new stipulation of fact  
20 and three stipulations of expected testimony, is my understanding?

21 TC[MAJ FEIN]: Yes, Your Honor.

22 MJ: Would you describe those for the record?



1 TC[MAJ FEIN]: Yes, ma'am. The first, Your Honor, has been  
2 marked as Prosecution Exhibit 180 Alpha for Identification which is a  
3 stipulation of expected testimony for witness number three from the  
4 Court's order -- or from the government's *Grunden* filing. Also,  
5 Prosecution Exhibit 181 Bravo for Identification and 181 Alpha for  
6 Identification which is a stipulation of expected testimony for  
7 witness number 29 from the government's *Grunden* filing. Prosecution  
8 Exhibit 182 for Identification is a Stipulation of Fact titled Adam  
9 Gadahn. And Prosecution Exhibit 183 for Identification is  
10 Stipulation of Expected Testimony for Commander Youssef Aboul-Enein.

11 MJ: Now, the Prosecution Exhibits 180 and 182 Bravo, are there  
12 numbers associated with that from the prosecution's witness list?

13 TC[MAJ FEIN]: Ma'am, there are numbers associated, but based  
14 off previous conversations with Court the standard number we're using  
15 is from the government's *Grunden* filing, Appellate Exhibit 479, and  
16 that's witness number three and 29.

17 MJ: Which one is three and which one is 29?

18 TC[MAJ FEIN]: Your Honor, Prosecution Exhibit 180 Alpha for  
19 Identification is witness number three, and Prosecution Exhibit 181  
20 Alpha and Bravo for Identification is witness number 29.

21 MJ: And that's from the *Grunden* filing at appellate exhibit  
22 what?

23 TC[MAJ FEIN]: 479, Your Honor.

1 MJ: Thank you. All right. PFC Manning, once again we're going  
2 to do a colloquy regarding these three stipulations of expected  
3 testimony and one stipulation of fact. Now, do you have a copy of  
4 all of those in front of you?

5 ACC: Yes, Your Honor.

6 MJ: Now, there should be a copy of Prosecution Exhibit 180  
7 which should be a classified stipulation of expected testimony for  
8 witness number three from the *Grunden* filing, Appellate Exhibit 479.  
9 Is that right?

10 TC[MAJ FEIN]: Your Honor, it is right. And that's 180 Alpha is  
11 the classified version. I'm having marked right now as Prosecution  
12 Exhibit 180 Bravo for Identification which is the unclassified  
13 redacted version.

14 MJ: All right. PFC Manning, do you have a copy of both 180  
15 Alpha which is the classified version, and 180 Bravo which is the  
16 unclassified version of the Stipulation of Expected Testimony for  
17 witness 12 number three?

18 ACC: Yes, Your Honor.

19 MJ: And that would be the *Grunden* -- from the government's  
20 *Grunden* filing at Appellate Exhibit 479. So were you able to go  
21 through with your defense team and figure out what witness that was?

22 ACC: Yes, Your Honor.

1 MJ: And same for Prosecution Exhibit 181 Alpha which is the  
2 classified version and 181 Bravo which is the unclassified version.  
3 Do you have those in front of you?

4 ACC: Yes, Your Honor.

5 MJ: And that would be for witness number 29 from Appellate  
6 Exhibit 479?

7 ACC: Yes, ma'am.

8 ADC[MAJ HURLEY]: Ma'am, if I may?

9 MJ: Yes.

10 ADC[MAJ HURLEY]: Internal for the defense team we used the  
11 numbers from the most recent defense -- or government exhibit list.  
12 We have no doubt that these are the same individuals.

13 MJ: All right. Do I need to be referring to any different  
14 terms when I talk about this with PFC Manning?

15 ADC[MAJ HURLEY]: No, ma'am.

16 MJ: So we're all on the same sheet of music, we are all talking  
17 about the same witnesses?

18 ADC[MAJ HURLEY]: We absolutely are. I just wanted to apprise  
19 you that that's -- when we would use numbers those would -- we would  
20 use a different set of numbers, but we are on the exact same sheet of  
21 music.

22 MJ: Just to ensure that the record is clear, after we've gone  
23 through this colloquy, at the next recess if the defense would again

1 for the classified appellate exhibit just write, 1, 2, Appellate  
2 Exhibit 180 and 181 just which witnesses you believe we're talking  
3 about when we go through this colloquy just to insure that the record  
4 is clear.

5 ADC[MAJ HURLEY]: Yes, ma'am.

6 MJ: And PFC Manning, looking at Prosecution Exhibit 183, do you  
7 have the Stipulation of Expected Testimony from Commander Youssef  
8 Aboul-Enein?

9 ACC: Yes, Your Honor.

10 MJ: And that's an unclassified stipulation of expected  
11 testimony. And also before you do you have a Stipulation of Fact  
12 from Adam Gadahn?

13 ACC: For Adam Gadahn, yes, Your Honor.

14 MJ: For Adam -- Yes, thank you. Prosecution Exhibit 182 for  
15 Identification.

16 ACC: Yes, Your Honor.

17 MJ: And that's also an unclassified stipulation of fact. And  
18 did you sign all four of these -- all of these stipulations of  
19 expected testimony and the stipulation of fact?

20 ACC: Yes, Your Honor.

21 MJ: Now, before signing them did you read them thoroughly?

22 ACC: Yes, Your Honor.

1 MJ: Do you understand the contents of each of these  
2 stipulations?

3 ACC: Yes, ma'am.

4 MJ: Before signing them, did your defense counsel explain the  
5 stipulations to you?

6 ACC: Yes, ma'am.

7 MJ: Do you understand you have the absolute right to refuse to  
8 stipulate to the contents of these documents?

9 ACC: Yes, ma'am.

10 MJ: Do you understand you should enter into a stipulation only  
11 if you believe it's in your best interest to do so? Do you  
12 understand that?

13 ACC: Yes, Your Honor.

14 MJ: Once again, there's a distinction between the stipulation  
15 of expected testimony and stipulation of fact. A stipulation of fact  
16 for Adam Gadahn, what that means is when counsel for both sides and  
17 you agree to a stipulation of fact, the parties are bound by that  
18 stipulation and the stipulated matters are facts and evidence to be  
19 considered along with all of the other evidence in the case. Do you  
20 understand that?

21 ACC: Yes, Your Honor.

22 MJ: Now, for the three stipulations of expected testimony,  
23 those are different. When counsel for both sides and you agree to

1 stipulations of expected testimony, you are agreeing here that for  
2 Prosecution Exhibit 180, if witness number three was here in court,  
3 and for Prosecution Exhibit 181 Alpha and Bravo, if witness number 29  
4 was here in court, and for the stipulation of expected testimony as  
5 Prosecution Exhibit 183 of Commander Youssef Aboul-Enein were here  
6 testifying in court under oath, that they would each testify  
7 substantially as what's set forth in these stipulations. The  
8 stipulation does not admit the truth of the person's testimony. The  
9 stipulation could be contradicted, attacked or explained in the same  
10 way as if the person was testifying in person. Do you understand the  
11 differences between a stipulation of fact and stipulations of  
12 expected testimony?

13 ACC: Yes, Your Honor.

14 MJ: Now, knowing what I've told you and what your defense  
15 counsel told you earlier with regard to these stipulations, do you  
16 still desire to enter into each of them?

17 ACC: Yes, Your Honor.

18 MJ: Do counsel concur in the contents of the stipulations?

19 TC[MAJ FEIN]: Yes, ma'am.

20 ADC[MAJ HURLEY]: Yes, ma'am.

21 MJ: Then Prosecution Exhibits 180 Alpha and Bravo are admitted.  
22 Prosecution Exhibits 180 Alpha and Bravo are admitted -- or 181 are  
23 admitted. Prosecution Exhibit 182 for Identification is admitted.

1 And Prosecution Exhibit 183 for Identification is admitted. Do we  
2 have copies of those original that I can go ahead and mark? Thank  
3 you. Do you have the redacted copy for 180 or do I have the -- [The  
4 court reporter handed the military judge the document]. The  
5 stipulations, both classified and unclassified, have been admitted.  
6 Is there anything else we need to address before we have Major Hurley  
7 and PFC Manning return to the defense table?

8 TC[MAJ FEIN]: Yes, ma'am. The last thing is just the admittance  
9 of Prosecution Exhibits 153 Alpha and Bravo for Identification which  
10 had already been, which were the previous stipulations of fact for  
11 UBL, Your Honor.

12 MJ: All right. What about it?

13 TC[MAJ FEIN]: Is actually, since they've been renumbered, Your  
14 Honor, just admitted. Other than the prosecution exhibit numbers.

15 MJ: Any objection?

16 ADC[MAJ HURLEY]: No, ma'am.

17 MJ: Prosecution Exhibit 153 Bravo for Identification is  
18 admitted. Is there an Alpha?

19 TC[MAJ FEIN]: Yes, ma'am, there should be.

20 MJ: Prosecution Exhibits 153 Alpha and Bravo are admitted. Is  
21 there anything else we need to address before we have PFC Manning and  
22 Major Hurley return to the defense cable?

23 TC[MAJ FEIN]: No, ma'am.

1           ADC[MAJ HURLEY]:     Not from defense.

2           MJ:   Go ahead and return.

3   **[The accused and assistant defense counsel returned to the defense**  
4   **table.]**

5           MJ:   Let's turn now to the judicial notice filings.

6           CDC[MR. COOMBS]:     Actually, ma'am, one alibi.  On PE 182, we  
7 covered this in the 802 session, it had several exhibits that were  
8 identified for identification.  The defense's understanding is those  
9 would have been admitted into evidence.

10          MJ:   Is that the government's understanding as well?

11          TC[MAJ FEIN]:   Yes, ma'am.

12          MJ:   And that was, just for the record, that's Prosecution  
13 Exhibit 182 for Identification?  So we're -- or 181.  That exhibit  
14 references prosecution exhibit, it says Prosecution Exhibit 15 for  
15 Identification, Prosecution Exhibit 168 for Identification, and  
16 Prosecution Exhibit 174 for Identification.

17          TC[MAJ FEIN]:   174 Charlie, ma'am.

18          MJ:   174 Charlie.  So, Mr. Coombs, my understanding, you're  
19 telling me and I do remember this from the 802 conference as well,  
20 that the parties agree that all three of these exhibits have been  
21 admitted already?

22          CDC[MR. COOMBS]:     That's correct, Your Honor.



1 MJ: Does either side any reason to go through the stipulations  
2 and make the amendments or is the record clear?

3 TC[MAJ FEIN]: The record is clear, ma'am.

4 CDC[MR. COOMBS]: Defense concurs.

5 MJ: All right. Thank you. All right. Is there anything else  
6 that we need to address before we proceed to judicial notice?

7 TC[MAJ FEIN]: No, ma'am.

8 CDC[MR. COOMBS]: No, Your Honor.

9 MJ: Have the judicial notice filings by the government, there  
10 should be two of them, have they been marked as Appellate Exhibits?

11 TC[MAJ FEIN]: No, ma'am, they have not.

12 MJ: Is now a good time to do that?

13 TC[MAJ FEIN]: Yes, ma'am. Ma'am, it's probably going to take  
14 more than 5 minutes to do that if you want to take a quick recess.

15 MJ: All right. We'll make it 10 minutes. Court is in recess  
16 until 20 minutes after 10.

17 **[The court-martial recessed at 1017, 1 July 2013.]**

18 **[The court-martial was called to order at 1028, 1 July 2013.]**

19 MJ: Court is called to order. Major Fein, are all the parties  
20 present when the Court last recessed again present in court?

21 TC[MAJ FEIN]: Yes, ma'am, they are.

22 MJ: All right. Thank you. Is there anything we need to  
23 address before we proceed to judicial notice?

1 TC[MAJ FEIN]: No, ma'am.

2 CDC[MR. COOMBS]: No, ma'am.

3 TC[MAJ FEIN]: Ma'am, the government filed over the weekend two  
4 documents, first, what has been marked as Appellate Exhibit 588 is a  
5 combined judicial notice filing to the Court, and then this is  
6 accounting for all previous judicial notice including last week's  
7 Court ruling. Then what has been marked as Appellate Exhibit 587 is  
8 the government's relevance and non-hearsay purpose for facts to be  
9 judicial noticed based off the Court's prior rulings.

10 MJ: All right. Let's begin with Appellate Exhibit 587,  
11 relevance for judicial notice. I note here that there are three  
12 proffered requests for judicial notice. The Court has addressed  
13 these before, and based on defense objections basically postponed  
14 ruling on those until trial. And the three at issues are that Julian  
15 Assange was located in Iceland in February of 2010 and working on the  
16 Icelandic modern media initiative, see Appellate Exhibit 472, which I  
17 assume are the chats?

18 ATC[CPT MORROW]: No, Your Honor. Appellate exhibit 472 was  
19 your ruling.

20 MJ: That was the initial ruling. Okay. The second one was  
21 that Lieutenant Colonel Lee Packnett was quoted in a New York Times  
22 article dated 18 March 2010, in this instance judicial notice is  
23 conditioned upon relevance and a non-hearsay or hearsay exception

1 usage. And the third one was that a New Yorker profile of Julian  
2 Assange titled, No Secrets, Julian Assange's Mission for Total  
3 Transparency, exists and was dated 7 June 2010. In this instance  
4 judicial notice is conditioned upon relevancy and a non-hearsay or  
5 hearsay exception usage. Now, under those three titles the  
6 government has put forth their view of relevance and hearsay.  
7 Defense, what's your position?

8 CDC[MR. COOMBS]: Your Honor, the defense maintains its  
9 objections both for relevance and for hearsay. We don't have any  
10 additional argument to offer, so we would be satisfied with the Court  
11 making a decision based upon the government's proffer.

12 MJ: All right. And during the R.C.M. 802 conference we held  
13 earlier the government has advised that the government will provide  
14 the Court with pinpoint cites of the particular exhibits that have  
15 been admitted or the testimony that has come before the Court to  
16 demonstrate relevance, and that's still left to be done, is that  
17 correct?

18 ATC[CPT MORROW]: That's correct, Your Honor. And we'll  
19 provide that to the Court and defense over the lunch hour.

20 MJ: Does the government desire any oral argument with respect  
21 to Appellate Exhibit 587?

22 ATC[CPT MORROW]: No, Your Honor.

1 MJ: All right. So the Court will then decide later on today,  
2 probably, whether or not the Court will take judicial notice and  
3 whether to sustain or overrule the defense's hearsay and relevance  
4 objections once the Court receives the pinpointed cites from the  
5 government. Now, anything else with respect to Appellate Exhibit  
6 587?

7 CDC[MR. COOMBS]: No, Your Honor.

8 ATC[CPT MORROW]: No, Your Honor.

9 MJ: Government, when might I expect those pinpoint cites?

10 ATC[CPT MORROW]: We'll do it at lunch, Your Honor.

11 MJ: All right. Thank you. Let's now look at Appellate Exhibit  
12 588. This is a combined judicial notice list. We've had quite a few  
13 judicial notice motions since the beginning of this case and the  
14 Court had asked the parties to get together and put sort of a list of  
15 all of them that will be potentially used in the merits and also on  
16 sentencing and to separate those two. So the parties have done that.  
17 There are some at issue highlighted in yellow that the defense has  
18 proposed and the government apparently doesn't agree with, and that  
19 would be number 15, public law 111-258, portions of Number B6, that  
20 Congress believed over classification was a potential issue and  
21 passed this legislation which contained not only just findings but  
22 specific statutory initiatives to address that issue. Number  
23 2(B)(8) that a letter to Secretary Robert Gates from Carl Levin dated

1 28 July 2010, exists and statements are admissible under M.R.E.

2 801(D) (2) (E) and M.R.E. 803(8) (A).

3 Now, Defense, once again, I know this is in the written  
4 list, but that second sentence there, are you offering, in Number 9,  
5 the Court's already taken judicial notice of the letter from Mr.  
6 Gates, that that exists. Are you offering the letter from Senator  
7 Levin as an admission by a party opponent or for context and  
8 completion?

9 CDC[MR. COOMBS]: Context and completion, Your Honor.

10 MJ: All right. And number 12 then of that series, William  
11 Leonard, Director of Information Security Oversight Office of the  
12 National Archives, statements dated 22 March 2007, given at the 2007  
13 House Committee on Homeland Security Hearings.

14 And finally, D5, the key assertions cited by the defense  
15 that trained government classifiers made only, "clearly correct  
16 classified decisions 64 percent of the time is based on an official  
17 audit" ("in an audit of agency classification activity conducted by  
18 my office approximately one year ago, we discovered that even trained  
19 classifiers, with ready access to the latest classification and  
20 declassification guides, and trained in their use, got it clearly  
21 right only 64 percent of the time in making determinations as to the  
22 appropriateness of classification.").

1           Now, the Court's recollection of this is all of this  
2 judicial notice was at issue when we were litigating the over  
3 classification, both the government's motion to preclude evidence of  
4 over classification and the defense motion for judicial notice of a  
5 variety of over classification matters. Now, the Court issued some  
6 rulings, again, conditioned on relevance. Defense, these highlighted  
7 yellow passages that I just read, are they intended to be used by the  
8 defense on merits, on sentencing, or both?

9           CDC[MR. COOMBS]:     On sentencing only, Your Honor.

10          MJ:   These would appear not to be ripe at this point?

11          CDC[MR. COOMBS]:     That is correct, Your Honor.

12          MJ:   Does the government agree?

13          ATC[CPT MORROW]:     Yes, Your Honor.

14          MJ:   Does the government have an objection to Number B8 there,  
15 the letter to Secretary Gates from Senator Levin if the second  
16 sentence about being statements admissible by a party opponent is  
17 stricken?

18          ATC[CPT MORROW]:     Yes. Because Senator Levin wouldn't be a  
19 party to this case based on your previous ruling, Your Honor, but I  
20 believe ----

21          MJ:   I understand that. What I'm saying is that sentence goes  
22 away and it's only offered as to put Number 9 in context for the  
23 response that Secretary Gates gave to show what he was responding to.

1           ATC[CPT MORROW]:     I believe Secretary Gates' response actually  
2 incorporates by reference the letter, all the relevant information  
3 that would come from the letter from Senator Levin which is this is  
4 in response to your letter of 28 July 2010.

5           MJ: So does the government have an objection to taking judicial  
6 notice basically of the whole package Secretary Gates -- well, I  
7 already ruled on the Secretary Gates letter -- that the Senator Levin  
8 initial letter come in just to provide the context for the response?

9           ATC[CPT MORROW]:     No, Your Honor.

10          MJ: Okay. So 8 and 9 with the sentence the statements are  
11 admissible under M.R.E. 801(D)(2)(e) and M.R.E. 803(8)(A), with that  
12 stricken, that's no longer an issue. Is that correct?

13          ATC[CPT MORROW]:     Yes.

14          MJ: Would the parties have any objection with the Court taking  
15 the original appellate exhibit and striking through this second  
16 sentence?

17          CDC[MR. COOMBS]:     No, Your Honor.

18          MJ: Do I have the original or am I working with my copy? All  
19 right. So the Court will then strike the second sentence and put a  
20 line through it, the sentence reading the statements are admissible  
21 under M.R.E. 801(D)(2)(E)(2) and M.R.E. 803(8)(A). All right. So  
22 the remaining highlighted portions then are what will remain at issue

1 when we reach the presentencing phase of the case. Is that correct?

2 CDC[MR. COOMBS]: Yes, Your Honor.

3 ATC[CPT MORROW]: That's correct.

4 MJ: Is there anything else we need to address with respect to

5 Appellate Exhibit 587?

6 CDC[MR. COOMBS]: No, Your Honor.

7 ATC[CPT MORROW]: No, Your Honor.

8 MJ: Is there anything else we need to address with respect to

9 any administrative or other issue before we proceed with the

10 government's case?

11 CDC[MR. COOMBS]: No, Your Honor.

12 TC[MAJ FEIN]: No, ma'am.

13 MJ: All right. Go ahead. Proceed.

14 TC[MAJ FEIN]: Ma'am, if I may read some stipulations from the

15 chair here.

16 MJ: That's fine.

17 TC[MAJ FEIN]: Ma'am, Stipulation of Expected Testimony dated 28

18 June 2013, this is Prosecution Exhibit 180 Bravo. This is for a

19 Witness Number 3 from the *Grunden* filing AE 479. Your Honor, several

20 paragraphs are redacted, but it's signed by Captain Overgaard, Major

21 Hurley and PFC Manning.



1           Your Honor, Stipulation of Expected Testimony for Witness  
2   Number 29 from the *Grunden* filing, Appellate Exhibit 479 dated 28  
3   June 2013, Prosecution Exhibit 181 Bravo.

4           Classification, Section 1.1A, of EO 13526, lists three  
5   classification levels for National Security Information. Information  
6   shall be classified TOP SECRET if its unauthorized disclosure  
7   reasonably could be expected to result in exceptionally grave damage  
8   to National Security, SECRET if its unauthorized disclosure  
9   reasonably could be expected to result in serious damage to the  
10   National Security, and CONFIDENTIAL if its unauthorized disclosure  
11   reasonably could be expected to result in damage to the National  
12   Security.

13           Section 6.1(i) of the EO defines "classified national  
14   security information" or "classified information" as "information  
15   that has been determined pursuant to this order or any predecessor  
16   order to require protection against unauthorized disclosure and is  
17   marked to indicate its classified status when in documentary form."  
18   Section 6.1(cc) of the EO defines "national security" as the  
19   "national defense or foreign relations of the United States."

20           Section 1.4 of EO 13526 lists the substantive categories of  
21   national security information that are eligible for classification.  
22   These categories include information pertaining to intelligence  
23   activities and intelligence sources and methods, as well as

1 information pertaining to the foreign relations or foreign activities  
2 of the United States.

3 The authority to classify information is derived from the  
4 succession of EOs, the current one being EO 13562. Your Honor, one  
5 correction. That should be 13526.

6 MJ: All right. Defense, do you agree?

7 ADC[MAJ HURLEY]: Yes, Your Honor.

8 TC[MAJ FEIN]: Section 1.3(a) of EO 13526 provides that the  
9 authority to classify information originally may be exercised only by  
10 the President, the Vice President, agency heads and officials  
11 designated by the President, and the United States Government  
12 officials delegated authority pursuant to section 1.3(c). Section  
13 1.3(c)(3) provides that TOP SECRET original classification authority  
14 may be delegated only by the President, the Vice President, or any  
15 agency head or official designated pursuant to Section 1.3(a)(2).

16 Section 1.1(a) of the EO provides that information may be  
17 originally classified under the terms of this Order only if all of  
18 the following conditions are met: (1) an original classification  
19 authority is classifying the information; (2) the information is  
20 owned by, produced by or for, or is under control of the United  
21 States Government; (3) the information falls within one or more of  
22 the categories of information listed in section 1.4 of the Order; and  
23 (4) the original classification authority determines that the

1 unauthorized disclosure of the information reasonably could be  
2 expected to result in some level of damage to the national security  
3 and the original classification authority is able to identify or  
4 describe the damage.

5           Section 1.1(a) (4) of EO 13526 provides that information may  
6 only be classified if unauthorized disclosure of the information  
7 reasonably could be expected to cause damage to the national security  
8 (which includes defense against transnational terrorism) and the  
9 original classification authority is able to identify or describe the  
10 damage. As described above, EO 13526 states that information shall  
11 be classified at one of three levels: TOP SECRET, SECRET, or  
12 CONFIDENTIAL depending on the damage to the national security that  
13 reasonably could be expected to result from unauthorized disclosure.

14           Your Honor, the remaining paragraphs are redacted; signed  
15 Captain Overgaard, Major Hurley and PFC Manning.

16           MJ: All right. Did the parties want to make that correction to  
17 the typo over the recess and just go ahead and initial it? That  
18 should be fine.

19           TC[MAJ FEIN]: Yes, ma'am.

20           CDC[MR. COOMBS]: Yes, ma'am.

21           ATC[ CPT von ELTEN]: Your Honor, I have Prosecution Exhibit  
22 183, the Stipulation of Expected Testimony for Commander Youssef  
23 Aboul-Enein.

1           It is hereby agreed by the Accused, Defense Counsel, and  
2 Trial Counsel, that if Commander Youssef Aboul-Enein were present to  
3 testify during the merits phase of this court-martial, he would  
4 testify substantially as follows:

5           I am a Commander in the United States Navy and an officer  
6 in the Medical Service Corps. Additionally, I am a Middle East  
7 Foreign Area Officer. Since 2006, I have served as a Senior Counter-  
8 Terrorism Advisor, Warning Officer, and Instructor on Militant  
9 Islamist Ideology at Joint -- at the Joint Intelligence Task Force  
10 for Combating Terrorism (JITF-CT) in Washington D.C.. I advise the  
11 House Homeland Security Committee on Violent Islamist radicalization.  
12 I am also Military Adjunct Faculty for Middle East Counter-Terrorism  
13 Analysis at the National Intelligence University. I am currently  
14 assigned to the Defense Intelligence Agency (DIA) at Bolling Air  
15 Force Base. Previously, I served as Country Director for North  
16 Africa and Egypt, Assistant Country Director for the Arabian Gulf,  
17 and Special Advisor on Islamist Militancy at the Office of the  
18 Secretary of Defense for International Security Affairs from 2002-  
19 2006. While at the Office of the Secretary of Defense, I helped  
20 prepare Department of Defense officials to engage in ministerial  
21 level talks with their counterparts from Morocco to the Persian Gulf.

22           My education consists of a B.B.A. from the University of  
23 Mississippi, an M.B.A and Masters in Health Services Administration

1 from the University of Arkansas, an M.S. in Strategic Intelligence  
2 from the National Defense Intelligence College, as well as an M.S. in  
3 National Resource Strategy from the Industrial College of the Armed  
4 Forces (Class of 2009-2010). I am the author of "Militant Islamist  
5 Ideology: Understanding the Global Threat," and "Iraq in Turmoil:  
6 Historical Perspectives of Dr. Ali al-Wardi from the Ottomans to King  
7 Feisal," both published by Naval Institute Press. I also contributed  
8 to the counter-terrorism portion of the May 2012, edition of  
9 "Perspectives on Terrorism." I am rated proficient in the Egyptian,  
10 Peninsular, Levantine, Modern Standard (Upper Level) and Iraqi  
11 dialects of Arabic by the Defense Language Institute. My operational  
12 tours include Liberia, Bosnia, and the Persian Gulf. My personal  
13 awards include the Army Commendation Medal presented by General Tommy  
14 Franks, the Joint Service Achievement Medal presented by the  
15 Commandant of the Joint Forces Staff College, and the Defense  
16 Meritorious Service Medal (DMSM) awarded by the Secretary of Defense,  
17 a second DMSM awarded by the DIA Director for Analysis.

18 I have spent years studying Al-Qaeda (AQ). From its  
19 inception through 2011, AQ was a militant Islamist organization  
20 founded and led by Usama bin Laden (UBL). AQ's philosophy was of  
21 global Jihad and strict interpretation of Sharia Law. Jihad is a  
22 Koranic principle, but AQ's definition translated into "religious war  
23 against the infidels." AQ's definition of 'jihad' opposed any nation

1 or organization that did not strictly adhere to Sharia Law as  
2 "infidels." Thus, from its inception through today, AQ seeks to  
3 attack countries constituting the "West," to include the United  
4 States and Western Europe. AQ also seeks to attack Arab regimes that  
5 AQ considers to be allied with the United States. For the purpose of  
6 my testimony, AQ was composed of its senior leadership and spokesmen  
7 as well as the senior leadership and spokesmen of its declared  
8 franchises, like Al Qaeda in the Arabian Peninsula.

9 From its inception, AQ was a terrorist organization that  
10 has been attacking the United States since the original attack on the  
11 World Trade Center in 1993, which killed six and wounded over one  
12 thousand. AQ claimed responsibility for the following attacks: 1,  
13 the 1998 bombing of U.S. Embassies in Kenya and Tanzania, which  
14 killed over 200 people and injured more than 5000 others; 2, the 2000  
15 bombing of the USS Cole, which killed 17 Sailors and injured more  
16 than 39 others; and 3, the 11 September 2001 attacks, which killed  
17 more than 3000 civilians and injured more than 5000 others. AQ  
18 continued to claim responsibility for international bombings  
19 throughout the 2000s. AQ, or organizations loosely affiliated with  
20 it, have claimed responsibility for attacking U.S. forces and their  
21 coalition partners working in Iraq and Afghanistan with a variety of  
22 direct action engagements (e.g. direct fire engagements, indirect  
23 fire engagements, and improvised explosive device attacks). AQ sees

1   itself as an enemy of the US; the 2001 Authorization for Use of  
2   Military Force is read to provide the authorization for U.S. military  
3   actions against AQ and its affiliates.

4           From its inception, AQ claimed that it would attack, and  
5   claimed responsibility for attacking, civilian or military targets  
6   with different means and degrees of complexity. The United States  
7   has defended against AQ since the 1990s. In 1998, UBL was indicted  
8   in federal court for conspiracy to murder, bomb, and maim United  
9   States citizens. The United States has employed forces against AQ  
10   worldwide, to include Africa and the Middle East. AQ, like common  
11   criminals, required secrecy to carry out their direct action  
12   missions. As the U.S. developed methods to respond to the stealthy  
13   tactics of AQ, their tactics evolved in order to continue their  
14   operations. This evolution-or creativity-compelled the same from the  
15   West to develop countermeasures. This cycle occurred from the  
16   inception of the defense against AQ through 2010.

17           AQ has also become more decentralized in response to the  
18   actions of the United States. AQ adopted a philosophy of creating a  
19   "leaderless environment" because it makes AQ terrorist cells harder  
20   to detect. This leaderless environment was born of necessity  
21   considering the West's success in capturing and killing AQ  
22   leadership. From the perspective of AQ, self-radicalization aided  
23   the development of a "leaderless environment." AQ sought to create

1 hostility and turn the population of any given country against its  
2 secular leadership to create a leaderless environment. To encourage  
3 self-radicalization, AQ implored all Islamists, specifically the  
4 younger generations, to take it upon themselves to fight their  
5 enemies. AQ did not have a centralized organizational structure,  
6 which helped in facilitating the leaderless environment in which they  
7 operate. Those individuals that responded to the calls for self-  
8 radicalization would be considered "AQ-inspired." "AQ-inspired" are  
9 indirectly connected to AQ.

10 AI Qaeda in the Arabian Peninsula (AQAP) is a terrorist  
11 organization that formed as a merger between AQ cells in Saudi Arabia  
12 and Yemen in 2003. From its inception through the end of 2010, AQAP  
13 claimed responsibility for: 1, an attack on Western expatriates  
14 resulting -- residing on Saudi soil; and 2, launching attacks against  
15 oil refineries. AQAP also claimed responsibility for the failed  
16 "underwear bomber" attack of 2000 [sic]. AQAP was the most creative  
17 "franchise" from its inception through the charged time period.

18 From its inception, AQ used the media to achieve its goals,  
19 gain notoriety, and inspire individuals to join in terrorist  
20 activities. AQ used the media for fundraising as well. This money  
21 would then be used to fund training, missions, bribes, media creation  
22 for propaganda and recruiting, and traveling. AQ used its notoriety  
23 to seek facilitators who would launder money, obtain items not easily



1 located in AQ's area of operation, move members of AQ to new  
2 destinations, and smuggle recruits.

3           From its inception, media perception was important to AQ.  
4 Any event that placed AQ in a positive light or depicts forces  
5 adversarial to AQ in a negative light would have been seen as  
6 beneficial by AQ. Acknowledgement of successful attacks against  
7 enemy forces would have likely boosted morale and may have led to a  
8 corresponding increase in attacks. Events that undermined  
9 cooperation with foreign leaders would have, from the perspective of  
10 AQ, increased antagonism toward those leaders and created an  
11 environment in which terrorist ideology excels.

12           Throughout the 1990s and early 2000s, AQ used media outlets  
13 to deliver and record -- deliver its recorded messages to a broader  
14 audience. In time, AQ decided to release its messages directly to  
15 the Internet through its media arm, As-Sahab. As-Sahab has been  
16 designed to operate like a media outlet. The golden As-Sahab logo in  
17 Arabic calligraphy was patterned off the golden logo of Al-Jazeera,  
18 which also features Arabic calligraphy. From its inception through  
19 2010, As-Sahab made videos to recruit and spread AQ propaganda.  
20 Propaganda was thought by AQ to be essential for these missions  
21 because it established AQ's credibility as an effective terrorist  
22 organization.

1           AQ has used the Internet since the 1990s. AQ used the  
2 Internet as means of communication for its leaders and members. As  
3 the Internet grew to host more information, communication through  
4 cyberspace, such as the Internet, was the preferred method of  
5 communication because AQ did not have a centralized organizational  
6 structure and AQ members were constantly moving in order to avoid  
7 being captured or killed by anti-AQ forces. AQ used the Internet for  
8 research for potential targets, recruits, and facilitators. AQ used  
9 the Internet for research since at least the early 2000s. As AQ  
10 developed its own resources such as As-Sahab, AQ shifted more of its  
11 attention onto the Internet. AQ used websites with users who were  
12 sympathetic to its goals. AQ also used all publicly available  
13 websites. AQ used websites that described United States government  
14 resources, websites that contained United States government  
15 information, and websites that researched United States government  
16 information to gather intelligence that may be useful in planning  
17 attacks against the United States. AQ also searched for information  
18 related to the United States government that would have been used for  
19 propaganda to undermine the United States or its allies, especially  
20 diplomatic information.

21           TC[MAJ FEIN]: Ma'am, a Stipulation of Fact, Prosecution Exhibit  
22 182, Adam Gadahn, dated 27 June 2013.

1           The United States and the Defense, with the express consent  
2 of the Accused, stipulate that the following facts are true,  
3 susceptible of proof, and admissible in evidence. These facts may be  
4 considered by the finder of fact to establish the elements of all  
5 charges and their specifications. They may be considered by the  
6 sentencing authority and on appeal in determining an appropriate  
7 sentence, even if the evidence of such facts is deemed otherwise  
8 inadmissible. The accused expressly waives any objections he may  
9 have to the admission of this evidence at trial under the Military  
10 Rules of Evidence, the Rules for Courts-Martial, the U.S.  
11 Constitution, or applicable case law.

12           Adam Gadahn is a senior leader of Al Qaeda (hereinafter  
13 "AQ"), the terrorist organization responsible for the attacks against  
14 the United States at the World Trade Center and Pentagon on 11  
15 September 2001. Adam Gadahn has been a member of AQ since 2004.

16           As-Sahab is a media organization operated by AQ. On or  
17 about 3 June 2011, As-Sahab media released a video titled, "Thou Art  
18 Held Responsible Only for Thyself" (hereinafter "Gadahn video"). The  
19 Gadahn video was released simultaneously in two separate parts  
20 (referenced herein as "Part I" and "Part II" respectively). The  
21 Gadahn video features Adam Gadahn and other AQ leaders as speakers.  
22 The Gadahn video serves as a propaganda and recruitment tool for AQ.

1           As-Sahab and Adam Gadahn obtained material from WikiLeaks  
2 and used the material from WikiLeaks in the Gadahn video. The Gadahn  
3 video contained excerpts from the WikiLeaks' edited version of the  
4 video file named "12 JULY 07 CZ ENGAGEMENT ZONE 30 GC Anyone.avi"  
5 (hereinafter "Apache video") contained in Prosecution Exhibit 15 for  
6 Identification, although already admitted, PE 168 for Identification,  
7 although already admitted, is the WikiLeaks edited version of the  
8 Apache video that appears on the WikiLeaks web site. The Gadahn  
9 video shows the WikiLeaks web site. Between the time stamps 3  
10 minutes and 23 seconds and 4 minutes and 40 seconds in Part I, the  
11 Gadahn video shows the Apache video, PE 168, on the WikiLeaks web  
12 site.

13           PE 174 Charlie is the Department of State information in  
14 the Gadahn video obtained from WikiLeaks. In Part I of the Gadahn  
15 video from time stamps 43 minutes and 28 seconds until 44 minutes and  
16 38 seconds, Adam Gadahn, speaking in English, recommends using the  
17 Internet to make "use of all means possible to do damage to the  
18 enemy." Referencing the Department's information during the same  
19 time stamps in Part I, Adam Gadahn states, "But, by the grace of  
20 God, the enemy's interests are today spread all over the place and  
21 easily accessibly as the leak of America's State Department cable on  
22 critical foreign dependency makes so clear." Adam Gadahn also states  
23 during the same time stamps in Part I, "And I advise every brother

1 who wants to work for this religion not undertake any action before  
2 taking advantage of the wide range of resources available today on  
3 the Internet, particularly the various manuals, encyclopedias, and  
4 courses, which deal with the mujahedeen's operational and electronic  
5 security, and security in general."

6 In Part II from the time stamps 5 minutes and 35 seconds  
7 until 6 minutes and 37 seconds, the narrator, citing Department  
8 material obtained from WikiLeaks, reports Arab leaders'  
9 "collaboration" with "their ruler, America," giving President Obama  
10 an "open door" to "wage war on the mujahidin." The narrator in Part  
11 II of the Gadahn video from time stamps 6 minutes and 38 seconds  
12 until 9 minutes, 1 second, also referencing the contents of the  
13 Department's material obtained from WikiLeaks, cites reports of the  
14 "lewd parties put on by the American consulates in Islamic countries  
15 that aim to corrupt the minds, morals, and religion of the youth."  
16 The narrator continues, "These documents revealed that most of the  
17 riches of the Islamic world are spent on corruption and waging war on  
18 Islam, while millions of Muslims live in abject poverty."

19 Inspire Magazine is a magazine published on the Internet by  
20 al Qaeda in the Arabian Peninsula (hereinafter "AQAP"). AQAP is a  
21 branch of AQ. Inspire Magazine serves as a propaganda and  
22 recruitment tool for AQAP and AQ. On or about 16 January 2011,  
23 Inspire Magazine published issue Number 4 (hereinafter "Winter 2010

1 Inspire Issue") on the Internet. On pages 44 to 45 of the Winter  
2 2010 Inspire Issue, the magazine lists activities one can do to "help  
3 the mujahidin in within the confines of the media sector." The  
4 Winter 2010 Inspire issue lists the archiving -- excuse me, Your  
5 Honor, The Winter 2010 Inspire issue lists that archiving large  
6 amounts of information is helpful to AQAP and AQ. The Winter 2010  
7 Inspire Issue further lists "anything useful from WikiLeaks" is  
8 useful for archiving.

9 Your Honor, I'm sorry. I need to make a correction on the  
10 record. Your Honor, I might have misstated the date of Paragraph 1  
11 on Page 1, Your Honor. I might have said on the record 11 September  
12 2011. It should be as written, 11 September 2001.

13 MJ: All right. Defense agree?

14 CDC[MR. COOMBS]: Yes, Your Honor.

15 TC[MAJ FEIN]: Your Honor, the United States offers to be read  
16 on the record Stipulation of Fact for UBL information dated 10 May  
17 2013, and has been admitted as Prosecution Exhibit 153 Bravo, the  
18 unclassified version of 153.

19 MJ: Go ahead.

20 TC[MAJ FEIN]: The United States and the Defense, with the  
21 express consent of the Accused, stipulate that the following facts  
22 are true, susceptible of proof, and admissible in evidence. These  
23 facts may be considered by the finder of fact to establish the

elements of all charges and their specifications. They may be considered by the sentencing authority and on appeal in determining an appropriate sentence, even if the evidence of such facts is deemed otherwise inadmissible. The accused expressly waives any objections he may have to the admission of this evidence at trial under the Military Rules of Evidence, the Rules for Courts-Martial, the U.S. Constitution, or applicable case law.

Usama bin Laden, hereinafter UBL, was the leader of al-Qaeda, the terrorist organization responsible for the attacks against the United States at the World Trade Center and Pentagon on 11 September 2001.

On 2 May 2011, United States government officials raided UBL's compound located in Abbottabad, Pakistan and collected several items of digital media. From the items of digital media, the following items were obtained: One, a letter from UBL to a member of al-Qaeda requesting the member gather Department of Defense material posted to WikiLeaks; two, a letter from the same member of al-Qaeda to UBL, attached to which was the Afghanistan War Log as Posted by WikiLeaks; and, three, the Department of State information released by WikiLeaks. The remainder of the information is redacted, Your Honor.

MJ: All right.

1 TC[MAJ FEIN]: Your Honor, at this time the United States  
2 intends to call Mr. Lewis as its last witness. However, the United  
3 States estimates that just its direct, because we intend to to  
4 qualify him will take approximately an hour and a half to possibly 2  
5 hours.

6 MJ: Is that the open session you're talking about?

7 TC[MAJ FEIN]: Yes, ma'am. And then the United States would  
8 then request to move into a closed session to finalize the  
9 foundational requirements to qualify him as an expert. I also assume  
10 there will be an unclassified cross-examination prior to moving into  
11 that session. The reason I mention it, Your Honor, it might be a  
12 good time to take an early lunch and come back early so we can start  
13 and finish with Mr. Lewis.

14 MJ: So do Mr. Lewis in his entirety after lunch?

15 TC[MAJ FEIN]: Yes, ma'am.

16 MJ: All right. I believe there's also the additional issues  
17 that have to be addressed during lunch with respect to the Internet  
18 Archive discussions that need to go on. How long are you -- and as I  
19 understand from the R.C.M. 802 conference we held earlier there's  
20 going to be some documents that the government has just received with  
21 respect to Mr. Lewis that the defense has not yet seen. Is that  
22 correct?

23 ADC[MAJ HURLEY]: Yes, ma'am, that's correct.



1 TC[MAJ FEIN]: Yes, ma'am.

2 MJ: So, you'll need some time as well?

3 ADC[MAJ HURLEY]: Yes, ma'am.

4 MJ: Have you gotten the documents yet?

5 ADC[MAJ HURLEY]: We haven't, ma'am.

6 TC[MAJ FEIN]: My understanding, ma'am, is they're ready to go  
7 after this session, but they're classified so I have to give them to  
8 the defense.

9 MJ: Well, at this point, knowing that you haven't seen the  
10 documents yet and you may need longer than you tell me, do the  
11 parties anticipate a certain amount of time that will be necessary at  
12 this point?

13 TC[MAJ FEIN]: May we have a moment to confer with the defense,  
14 Your Honor?

15 MJ: Yes.

16 **[There was a brief pause while the trial counsel consulted with the**  
17 **defense counsel.]**

18 TC[MAJ FEIN]: Ma'am, may we reconvene at 1300, and then if more  
19 time is needed we'll figure it out at that time?

20 MJ: Is that acceptable to the defense?

21 ADC[MAJ HURLEY]: Yes, ma'am.

22 MJ: All right. Court is in recess until 1300.

23 **[The court-martial recessed at 1103, 1 July 2013.]**

1 [The court-martial was called to order at 1322, 1 July 2013.

2 MJ: Court is called to order. Let the record reflect all  
3 parties present when the Court last recessed are once again present  
4 in court. Major Fein, when you initially announced the parties, did  
5 we announce the change in court reporters?

6 TC[MAJ FEIN]: Yes, Your Honor.

7 MJ: All right. During the lunch, Defense, you filed with the  
8 Court, at least you emailed me a defense clarification of colloquy  
9 for stipulations of expected testimony for Prosecution Exhibits 180  
10 and 181. Has that been marked as an appellate exhibit?

11 ADC[CPT TOOMAN]: It has. We have a copy for you if you would  
12 like, Your Honor.

13 MJ: I have it. And that's Appellate Exhibit 589 which  
14 basically does that witness comparison for number three and number 29  
15 from Prosecution Exhibits 180 and 181?

16 ADC[CPT TOOMAN]: Yes, ma'am.

17 MJ: The Court also over the lunch period had looked at  
18 classified Appellate Exhibits 479 and 475 and compared witnesses  
19 three and 29 with witnesses 23 and 107 as identified in Appellate  
20 Exhibit 475 and also confirmed they are in fact the same people. Is  
21 there anything else we need to address with this exhibit?

22 CDC[MR. COOMBS]: No, Your Honor.

23 TC[MAJ FEIN]: No, ma'am.

1 MJ: Has the defense had an opportunity to speak or have your  
2 expert speak telephonically with the Internet Archive?

3 CDC[MR. COOMBS]: Yes, Your Honor. We have. Based upon that  
4 conversation, my expert speaking with one of their engineers, the  
5 defense has decided to withdraw its authentication objection to PE  
6 109 for Identification.

7 MJ: All right. Thank you. Are you still going forward with  
8 your 403 objection?

9 CDC[MR. COOMBS]: Yes, Your Honor.

10 MJ: Okay. All right. Government, do you have anything else to  
11 add?

12 ATC[CPT MORROW]: No, Your Honor.

13 MJ: Are you going to move for admission of Prosecution Exhibit  
14 109 for Identification?

15 ATC[CPT MORROW]: Yes, Your Honor. We renew our motion or we  
16 move to admit Prosecution Exhibit 109 for Identification into  
17 evidence.

18 MJ: May I see Appellate Exhibit 584, please? All right. The  
19 Court notes that defense has withdrawn its authentication objection  
20 to Appellate Exhibit 109 for Identification. In Appellate Exhibit  
21 584 I initially ruled with respect to admitting Prosecution Exhibits  
22 31 and 32, and also ruled that Prosecution Exhibit 109 for  
23 Identification was not properly authenticated. Also, in this ruling

1 the Court held or the Court ruled, its conclusions of law, that  
2 Prosecution Exhibit 109 is a request for information and is offered  
3 for the fact that the request was made not for the truth of the  
4 matter asserted. The government offers PE 109 for Identification for  
5 a non-hearsay purpose, the circumstantial evidence that PFC Manning  
6 was aware of Prosecution Exhibit 109 for Identification and his  
7 intent to gather information and send it to WikiLeaks. Although the  
8 government has not presented evidence that the accused actually  
9 accessed PE 109 for Identification, the government has presented  
10 evidence that PFC Manning searched Intelink for WikiLeaks and for  
11 some of the information on PE 109 for Identification. The government  
12 has also presented evidence that when a person does an Intelink  
13 search and navigates to another website to continue the search,  
14 Intelink no longer captures the metadata.

15           The Court finds the timing of PE 109 for Identification  
16 posting in conjunction with other evidence presented by the  
17 government is relevant, circumstantial evidence offered for a non-  
18 hearsay purpose to further the inference that PFC Manning was aware  
19 of the information requested by WikiLeaks in Prosecution Exhibit 109  
20 for Identification. Should Prosecution Exhibit 109 for  
21 Identification be properly authenticated, it is relevant for the  
22 specifications in Charges I and II.

1           Now, the Court did an M.R.E. 403 balancing test with  
2   respect to Prosecution Exhibits 31 and 32 for Identification because  
3   I intended to admit those at the end of the day with these rulings.  
4   The Court did not do a 403 analysis with respect to Prosecution  
5   Exhibit 109 for Identification. The Court finds that its 403  
6   analysis with respect to Prosecution Exhibits 31 and 32 for  
7   Identification also applies to Prosecution Exhibit 109 for  
8   Identification. The Court has considered whether the probative value  
9   in Prosecution Exhibit 109 for Identification is substantially  
10   outweighed by the danger of unfair prejudice under the criteria of  
11   Military Rule of Evidence 403 and finds it is not. The Court as fact  
12   finder will consider the evidence for its proper admissible purposes.  
13   Thus, in light of the defense's withdrawal of their authentication  
14   objection, and the Court's 403 analysis, and the analysis with  
15   respect to hearsay and relevance, the government's motion to admit  
16   Prosecution Exhibit 109 for Identification is granted and Prosecution  
17   Exhibit 109 for Identification is admitted. May I see it, please?  
18   Prosecution Exhibit 109 for Identification is admitted.

19           All right. Government, I also -- is there anything else we  
20   need to address with respect to that issue?

21           CDC[MR. COOMBS]:    No, Your Honor.

22           ATC[CPT MORROW]:   No, Your Honor.

1 MJ: Government, I notice you also submitted via email to me and  
2 I want to see if this has been marked as an appellate exhibit, 28  
3 June 2013, relevant and non-hearsay purposes for facts to be judicial  
4 noticed.

5 ATC[CPT MORROW]: Yes, Your Honor. We re-filed that with  
6 annotations in the comment boxes corresponding to specific evidence  
7 that we presented in court.

8 MJ: Have you marked that as an appellate exhibit?

9 ATC[CPT MORROW]: It hasn't been marked, Your Honor, we didn't  
10 mark it initially because we didn't know where in line you wanted to  
11 mark it, if you wanted to mark it with the original.

12 MJ: Why don't we mark it as the original with an A next to it?  
13 The original was what?

14 ATC[CPT MORROW]: So, Your Honor, that filing would be  
15 Appellate Exhibit 587 Alpha.

16 MJ: All right. Thank you. Has the defense seen it?

17 ATC[CPT MORROW]: Yes, Your Honor.

18 MJ: Defense, you have already told me you don't wish additional  
19 oral argument with respect to this motion, is that true, after this  
20 filing as well?

21 CDC[MR. COOMBS]: Yes, Your Honor.

1 MJ: And that has been filed as Appellate Exhibit 587 Alpha.

2 The Court will consider that later today. And there's been an  
3 additional combined judicial notice filing.

4 ATC[CPT MORROW]: Yes, Your Honor. This one is dated 1 July  
5 2013, so today. Again, the difference between this filing and the  
6 previous combined judicial notice accounting is that this filing is  
7 broken up into facts that would be relevant for the merits phase and  
8 facts that would be relevant for presentence.

9 MJ: All right. Defense, have you had a chance to look at this  
10 yet?

11 CDC[MR. COOMBS]: Have not, Your Honor.

12 MJ: Why don't we do this? Let's make this an Alpha as well  
13 along with the original one. The Court does note for the record, the  
14 issue we discussed before that was originally objectionable with  
15 respect to the Finkel book and eight and nine the original filing is  
16 no longer in the current filing.

17 ATC[CPT MORROW]: I believe it wasn't the Finkel book, it was  
18 the letter from Senator Levin, Your Honor.

19 MJ: I'm sorry. I stand corrected. The letter from Senator  
20 Levin to Secretary Gates being used for context. So that is no  
21 longer one of the objectionable pieces in the new judicial notice on  
22 1 July 2013.

1           ATC[CPT MORROW]:     Your Honor, this will be Appellate Exhibit  
2   588 Alpha.

3           MJ: All right. So once again, this is not ripe, any of these  
4   judicial notice issues from the defense. Defense, take a look at the  
5   combined judicial notice, if you have any issues or objections or  
6   believe it doesn't accurately reflect what the state of the judicial  
7   notice is, just let me know.

8           CDC[MR. COOMBS]:     Yes, Your Honor.

9           MJ: Okay. Is there anything else we need to address at this  
10  time before we proceed?

11          CDC[MR. COOMBS]:     No, Your Honor.

12          TC[MAJ FEIN]: No, ma'am.

13          MJ: All right. Government.

14          TC[MAJ FEIN]: Ma'am, just for the record, the United States was  
15  able to provide the two documents asserted as the basis of Mr.  
16  Lewis's testimony to the defense during lunchtime.

17          MJ: Defense, have you had an adequate time to go over them?

18          ADC[MAJ HURLEY]:     Yes, ma'am, we have.

19          TC[MAJ FEIN]: And the United States calls Mr. Danny Lewis.  
20  DANNY J. LEWIS, civilian, was called as a witness for the  
21  prosecution, was sworn, and testified as follows:

22                                 **DIRECT EXAMINATION**

23  Questions by the trial counsel [MAJ FEIN]:



1 Q. Sir, you are Mr. Danny Lewis of the Defense Intelligence  
2 Agency?

3 A. I am.

4 Q. Sir, before we begin, if any question that any party or the  
5 Court asks you elicits a classified answer, please notify the Court  
6 prior to answering that question. Sir, what is your current position  
7 within the Defense Intelligence Agency?

8 A. I'm the Senior Expert and Counterintelligence Advisor to  
9 the Directorate of Science and Technology for DIA.

10 Q. Sir, what are your general duties and responsibilities in  
11 that capacity?

12 A. In the activities that that Directorate handles for DIA, I  
13 look at those activities from a counterintelligence standpoint  
14 insuring that we're taking into account the things that our foreign  
15 adversaries, the interests that they would have in those activities,  
16 how they might try to stop those activities, and give advice and  
17 assistance on how best to do those activities, operations.

18 Q. Sir, when did you begin your government service?

19 A. I joined the Army in July of 1976.

20 Q. And how many of those years, sir, have been in civilian  
21 capacity?

22 A. I became a civilian in December of 1997.

23 Q. And did you serve after duty from 1977 until 1997?

1           A.    No. I actually retired in May of 1997. I had a 6 month  
2 break there when I was figuring out what I was going to do with my  
3 life and figured I would continue doing counterintelligence for the  
4 Army in a civilian capacity.

5           Q.    Sir, how many of those years in the civilian service have  
6 been in the field of counterintelligence?

7           A.    Since May of 1984.

8           Q.    How many years do you estimate that is?

9           A.    About 29.

10          Q.    Thank you, sir. Sir, you've mentioned counterintelligence  
11 now a few times. What is counterintelligence?

12          A.    There's a lot of definitions, but it's generally the  
13 information and the activities that we use to identify, disrupt,  
14 exploit our foreign adversaries' intelligence services or  
15 international terrorism organizations, keep them from defeating us.

16          Q.    And, sir, what is counterespionage?

17          A.    Counterespionage is an area of counterintelligence that's  
18 really more focused on espionage investigations, really focused on  
19 proving or disproving allegations against any individual.

20          Q.    Sir, what elements do you always look for in significant  
21 espionage investigations?

22          A.    What's key for us always there will be travel and money.

23          Q.    And what do you mean by travel, sir?

1           A.    If an individual has or is committing espionage, they  
2 actually have to meet with the foreign intelligence service at some  
3 point, so that type of travel. We look for travel that is not  
4 associated with a normal leave or anything out of the norm, an  
5 anomaly, if you will. Money, if we're investigating someone, we've  
6 got a pretty good idea of the normal finances for an individual.  
7 We're looking for those activities which are not explained by the  
8 normal amount of income, a deposit that shows up, jewelry that's  
9 bought, a new car, a new house, anything that would show us money is  
10 being spent, but we can't necessarily decide where it come from.

11          Q.    Sir, could you please briefly explain for the Court what  
12 are the different functions of counterintelligence?

13          A.    Counterintelligence has CI operations, investigations,  
14 collections, analysis, and a functional services which has polygraph  
15 and some other support things that support all of the other  
16 functions.

17          Q.    And, sir, what do you mean by analysis and production?

18          A.    Analysis is the foundation for all of the operational and  
19 investigative activity for CI, those are the folks who are actually  
20 studying our adversaries. They look at the individuals, the  
21 organizations that are associated with our adversaries intelligence  
22 services and they give us a story of who those people are, who those

1 organizations are, how they operate, which then goes into helping the  
2 investigations and the operations part of that.

3 Q. And, sir, what is collection?

4 A. Collection is a fundamental basic skill of  
5 counterintelligence agents. It can be done through open source.  
6 Anytime we're collecting information that's out there, it could be  
7 from a person, it could be from a store shop owner, a magazine,  
8 anything where it just covers the type of activities that gives us a  
9 name for when we're collecting information, bringing it in, it could  
10 go to the analysts, it could go to the investigators, it can go to  
11 the operators.

12 Q. Sir, why does the Department of Defense have a  
13 counterintelligence program?

14 A. It is the -- It is there to protect us from our foreign  
15 adversary's intelligence entities and international terrorist  
16 organizations.

17 Q. And, sir, how does counterintelligence help commanders on  
18 the battlefield?

19 A. Counterintelligence, it applies in all of the areas applied  
20 in the field. It is the individuals that are running the low level  
21 source networks, meeting with the local areas, identifying threats in  
22 a particular area. They will handle the investigations that come up  
23 in that particular area. If anyone's alleged from an insider,

1 someone outside the wire that's trying to damage us, they do all the  
2 investigations and operations that are focused there in theater.

3 Q. Thank you, sir. Now I'd like to have you focus on your  
4 actual career in counterintelligence field. When were you in the  
5 military?

6 A. July of '76 to December of '97.

7 Q. And what was your rank when you retired, sir?

8 A. I was a Chief Warrant Officer 2.

9 Q. And when did you become a military officer?

10 A. October of 1991.

11 Q. And what was your first counterintelligence job, where was  
12 it?

13 A. It was in Germany for the 527 MI Battalion.

14 Q. And from what year, sir?

15 A. That would have been February of 1985 till 8 August of  
16 1988.

17 Q. And what were the general duties and responsibilities that  
18 you had at the 527?

19 A. In a position like that it was the full range or in a field  
20 office so our handling of any interviews, anybody that wants to come  
21 in and report a suspicious activity. You're handling the CI  
22 education for everyone that's in the community, the newcomers, the  
23 yearly requirement to brief people. The old acronym used to be

1 SAEDA, I'm not sure what the Army calls it now. Any type of support  
2 activity for any CI operations, office of operations that are going  
3 on in the area, so anything from training, education, investigations,  
4 operations support.

5 Q. And, sir, what was your next duty assignment after your  
6 assignment to Germany?

7 A. My next CI assignment was to the Army's Foreign  
8 Counterintelligence Activity here at Fort Meade.

9 Q. Sir, did that assignment require you to go through a  
10 selection process?

11 A. Yeah, it was, the Army has an offline management program  
12 which allows people to specialize in one area and not continue to get  
13 moved around every three years like the normal PCS cycle.

14 Q. And is that a selective program, sir?

15 A. It is.

16 Q. And how long were you at the Foreign Counterintelligence  
17 Agency for?

18 A. On active duty ----

19 Q. Yes.

20 A. ---- that would have ----

21 MJ: Yes.

1           ADC[MAJ HURLEY]:    Ma'am, in order to move this along, we  
2 actually have no objection to the government offering Mr. Lewis's CV  
3 as a prosecution exhibit.

4           MJ: I'll let the government present their case as they choose.

5           Q.    Sir, the question was what was the role or what did the,  
6 what was the mission of the Foreign Counterintelligence Agency at the  
7 902nd?

8           A.    The Foreign Counterintelligence Activity, it was  
9 responsible for all the significant counterespionage investigations  
10 and all the CI offensive operations that were conducted by the Army.

11          Q.    And, sir, earlier you mentioned the offline management  
12 program. Why was it -- Why were Soldiers who were assigned to FCA,  
13 why did they required to be in such a program?

14          A.    It was normally assessed based on the experience that had  
15 been shown and potential. Before you allowed someone into the  
16 organization which handled the Army's most significant sensitive  
17 investigation, they wanted to make sure you had the ability to do the  
18 job.

19          Q.    And, sir, what do you mean by significant investigation?

20          A.    In that context, that's normally investigations which  
21 fairly certain indicated that espionage has been or is being  
22 conducted.

1 Q. And, sir, after you retired in 1997 what was your next  
2 counterintelligence job?

3 A. In a few months later in December I came back to the same  
4 organization, the Foreign Counterintelligence Agency as a civilian.

5 Q. And, sir, was that, were you a general GS employee or was  
6 that part of another special program?

7 A. It was part of a military intelligence civilian excepted  
8 career program. Kind of like the same thing I had in the military,  
9 it was a way there where Army civilian employees could specialize in  
10 one area and stay without being moved around every 4 or 5 years.

11 Q. And, sir, how long were you at FCA for that tour as a  
12 civilian?

13 A. December '97 until November 2001.

14 Q. And, sir, what were your general duties and  
15 responsibilities while you were at FCA as a civilian during that time  
16 frame?

17 A. I was a senior investigator, same type of significant  
18 investigations, just as a civilian instead of military.

19 Q. Sir, in the fall of 2001 where did you move to?

20 A. I did a few months with the National Security Agency.  
21 After the events of September 11, NSA decided they wanted to bring in  
22 some outside expertise into their CI program, they went out into the  
23 community collecting a few folks, and based on my experience I was



1 one of the ones that they tried to bring in and help grow a new CI  
2 program.

3 Q. Sir, were you hand-picked for that job from your  
4 counterintelligence background?

5 A. Yes.

6 Q. And, sir, when you left NSA where did you go?

7 A. I went back to FCA as a promotion to an executive  
8 investigator position.

9 Q. And what were your general duties and responsibilities as  
10 an executive investigator?

11 A. I oversaw the investigations that FCA was doing as well as  
12 continue to conduct some of the investigations myself.

13 Q. And then, sir, what was your next job in the  
14 counterintelligence field?

15 A. From there I left to become the Chief of Training for the  
16 DoD Joint CI Training Academy.

17 Q. Sir, what is the joint -- DoD Joint Counterintelligence  
18 Training Academy?

19 A. It's the one place where all of the counterintelligence  
20 training is done now within DoD for both the military services and  
21 the defense agencies.

22 Q. And, sir, how long were the Chief of Training there?

23 A. That would have been August of 2003 until December of 2006.

1 Q. And what was your next assignment within the field of  
2 counterintelligence as a civilian after the Chief of Training at JCL?

3 A. I became the Chief of the Counterespionage Division and the  
4 Counterintelligence Field Activity.

5 Q. And, sir, what is the -- or what was the  
6 Counterintelligence Field Activity?

7 A. It was also an agency that was created after the events of  
8 9-11 and it was meant to bring in -- bring some cohesion to all of  
9 the different CI missions within DoD, try to make sure everyone is  
10 working in one direction and we don't have people shooting off doing  
11 their own little CI thing.

12 Q. And when you say people, sir, could you please ----

13 A. Organizations, the defense agencies, the CI entities within  
14 the defense agencies as well as the CI entities within the military  
15 services.

16 Q. Sir, what were your responsibilities as the Chief of the  
17 Counterespionage Division at CIFA?

18 A. We had a couple responsibilities. We had visibility, we  
19 were the one entity that set above all the different stovepipes of  
20 the military services and defense agencies, so we had visibility over  
21 all the significant CI and CT investigations, all the offensive CI  
22 operations, so we had visibility over those. And our effort there  
23 was to make sure if we saw something that was happening in the Army

1 that would impact something that was happening in the NSA, we would  
2 reach those two individuals together to insure that we're not  
3 duplicating effort, working too much in one area and not enough in  
4 another area.

5 Q. Sir, in your explanation using the term we, what were your  
6 specific responsibilities?

7 A. I was responsible for the oversight of all of those  
8 activities.

9 Q. And, sir, how long were you at CIFA for?

10 A. CIFA went away in the middle of 2008, became -- fell under  
11 the Defense Intelligence Agency, so my position stayed the same from  
12 December of 2006 until May of 2013, it just transitioned from CIFA to  
13 the Defense Intelligence Agency.

14 Q. And how did your responsibilities, if at all, change once  
15 you transitioned over to DIA?

16 A. At that time DIA assessed that position should have been a  
17 senior position, an expert in counterintelligence, so they identified  
18 that position, they announced it, competed it, and I was selected for  
19 that position.

20 Q. And what was that position again, sir?

21 A. The Chief of the Counterespionage Division.

22 Q. Sir, does that make you an SES, a senior member of the  
23 senior executive?

1       A.    I'm a Defense Intelligence Senior Level Individual.  It's  
2 part of the senior service.  SEs are normally associated with being  
3 the senior leaders, providing leadership.  As a DISL as it's called,  
4 we are subject matter experts at the senior level.

5       Q.    And, sir, you had to compete for that job?

6       A.    Yes.

7       Q.    And you were selected?

8       A.    Yes.

9       Q.    Sir, you've mentioned now throughout your testimony the  
10 term operations.  What do you mean by operations in general, sir?

11      A.    Offensive CI operations, those are the clandestine  
12 activities that are focused on individuals that we believe to be or  
13 known to be involved in our adversaries' intelligence organizations  
14 or in international terrorist entities.

15      Q.    And what do you mean by the term investigations?

16      A.    Investigations are those significant investigations being  
17 conducted across the Department by the military services or the  
18 defense agencies or the FBI.  When that investigation actually has a  
19 DoD equity, those investigations were report up to our office and we  
20 also maintain oversight over those.

21      Q.    And, sir, how long did you serve as the Director of the  
22 Counterespionage Section in DIA and CIFA?

1           A.    The Chief that would have been -- under CIFA, just, so that  
2 would have been from December 2006 to August of 2008.

3           Q.    And then what about in DIA?

4           A.    Since 2008 until May of '13.

5           Q.    Sir, in your capacity as the Director of the  
6 Counterespionage Section, how many counterintelligence professionals  
7 did you oversee in that position?

8           A.    In that particular area, there was about 50 to 55 at any  
9 one time.

10          Q.    And, sir, in your role as the Director of the  
11 Counterespionage Section, to whom did you make recommendations based  
12 off of your technical advisor role?

13          A.    Right. The primary focus of having visibility over the CI  
14 operations and the significant investigations was to insure that the  
15 Undersecretary of Defense for Intelligence, the Deputy Undersecretary  
16 of Defense for Intelligence and Security was aware of those  
17 activities that met a certain criteria that were happening with any  
18 given month. We gave monthly briefings to the USDI, the  
19 Undersecretary of Defense on those.

20          Q.    And, sir, you said we. Did you give those briefings or did  
21 you office?

22          A.    Yes, no, I prepared and gave the briefings.

1 Q. And how often did you give those briefings to the  
2 Undersecretary of Defense and Deputy Undersecretary for Intelligence,  
3 excuse me?

4 A. Verbal, yes -- Verbal briefings were once a month. If  
5 there were activities happening between those briefing cycles I would  
6 prepare memos to go up to the USDI to make him aware of a particular  
7 situation.

8 Q. And, sir, were you responsible for preparing briefs for  
9 members of Congress?

10 A. Yes, we do. I was responsible for overseeing a report to  
11 Congress every quarter which was focused on the offensive CI  
12 operations, basically a summary of what was happening in that  
13 quarter, both from an operational standpoint and from a financial  
14 standpoint.

15 Q. Sir, in an unclassified manner, could you please explain  
16 for the court what you mean from an operational standpoint?

17 A. The activities we're running against a foreign adversary,  
18 the contact that we were having with that adversary, and the things  
19 that were happening during that relationship, that's it.

20 Q. So you were -- gotcha. And what do you mean from a  
21 financial standpoint, or monetary? Excuse me.

1       A.    There is normally payment going on in those type of  
2 operations between the adversary and the people that are involved in  
3 our operations.

4       Q.    All right, sir.  And what is your current position again,  
5 sir, since May 2013?

6       A.    Since 2013 I'm the Senior Expert and Counterintelligence  
7 Advisor for the Directorate of Science and Technology in DIA.

8       Q.    In an unclassified overview, sir, what does the Science and  
9 Technology Directorate do?

10      A.    Still kind of new to that, so from an unclassified area,  
11 much like in the CI standpoint from operations and investigations,  
12 there are other type of operations that DIA will be responsible for  
13 around the globe that would involve scientific type operations where  
14 we're -- yeah, I don't know exactly how to say that unclass, I'm  
15 still so new to that position.

16      Q.    Okay, sir.  What is your role within that organization?

17      A.    I look at the operations that they have planned, activities  
18 they have planned, and I look at that from the viewpoint of our  
19 foreign adversary, how would they view that, how could they defeat  
20 that, what would they do if they found out about that.

21      Q.    And were you selected for that job, sir?

22      A.    Yes.

1 Q. Sir, at this time are you the most senior or experienced  
2 counterintelligence professional in DIA?

3 A. Experienced? Yes. Senior? No.

4 Q. And how do you know that, sir?

5 A. The experience?

6 Q. Yes, sir.

7 A. Because I know all of the CI people within DIA and no one  
8 has the background from both the oversight of what's happening across  
9 all of DoD as well as the experiences I had on active duty and as a  
10 civilian in the Army.

11 Q. Sir, in total how long have you been a badged and  
12 credentialed intelligence investigator?

13 A. Continuously since -- So about 29 years.

14 Q. Sir, I'd like to now have you focus on significant awards  
15 that you've won during your career, if any. What military awards  
16 have you received when you were on active duty?

17 A. On active duty I think it was two ARCOMs, an MSM and a  
18 Legion of Merit.

19 Q. And have you received as a civilian, sir, any awards for  
20 your involvement in any counterintelligence investigations?

21 A. Yes. In 1996 every year DoD gives a set of awards for  
22 different -- the different function areas within DoD, and for 1996 I  
23 was the DoD CI Investigator of the Year.



1 Q. And how many individuals per year receive this award, sir?

2 A. One.

3 Q. And, sir, in 1996 what was the case that you won that award

4 for?

5 A. It was the joint investigation with the Army and the FBI of

6 retired Colonel George Trofimoff.

7 Q. Sir, who was the person -- who was that person?

8 A. He was an individual that was ultimately convicted for

9 committing espionage on behalf of Russia from the 60s, 70s and most

10 of the 80s. At the time he was a civilian within the Department of

11 the Army in Germany working when we were conducting the

12 investigation.

13 Q. And what did he do, sir, that ultimately led to the

14 investigation?

15 ADC[MAJ HURLEY]: Objection, Your Honor. Relevance.

16 MJ: We are getting far afield. What's the point?

17 TC[MAJ FEIN]: Your Honor, the United States intends to offer

18 Mr. Lewis as an expert in counterintelligence and specifically an

19 expert in valuing government information by foreign intelligence

20 services. This goes directly to that based off of his prior

21 experiences and his knowledge base, Your Honor.

22 MJ: How many of these investigations are you going to talk

23 about?

1 TC[MAJ FEIN]: He only received two awards, Your Honor, only two  
2 investigations.

3 MJ: All right. Overruled for now. Go ahead.

4 **Questions continued by the trial counsel [MAJ FEIN]:**

5 Q. Sir, the question was what did Colonel Trofimoff, what did  
6 he do that warranted an investigation that you participated in?

7 A. Yes. He was ultimately found to have provided about 50,000  
8 pages of Secret and below documents to the Russian government.

9 Q. And, sir, did he get paid to do that?

10 A. Yes.

11 Q. And how much money did he get paid?

12 A. About \$250,000.

13 Q. And what type of information was included in those  
14 documents?

15 A. Most of those documents contained what would be called  
16 collection requirement type documents. It was a compilation of  
17 information that we needed to know if we were, had an opportunity to  
18 interview or talk to someone from a foreign country.

19 Q. And, sir, what was the classification of information he  
20 compromised and you investigated?

21 A. Secret and below, Secret and Confidential primarily.

22 Q. Was there any unclassified information?

23 A. Yeah.

1 Q. And, sir, did you win this -- did you win the top DoD  
2 Counterintelligence Investigator Award a second time?

3 A. Yes.

4 Q. In what year, sir?

5 A. 1999.

6 Q. And, sir, has anyone that you know of ever won the award  
7 twice in the Department of Defense?

8 A. No.

9 Q. You're the only one, sir?

10 A. Yes.

11 Q. Sir, what case was your case in 1999 that you received the  
12 award for?

13 A. That was the investigation of retired Army Sergeant David  
14 Boone.

15 Q. And, sir, who was Sergeant Boone?

16 A. At the time of the investigation he was a retired senior  
17 enlisted member living in Germany. He had ultimately we determined  
18 that he had provided the Russian government between October of '88  
19 and the first part of 1992 classified information.

20 Q. And, sir, how much -- approximately how much information  
21 through your investigation did you find out that he had provided?

22 A. He normally provided about 350 documents every 4 months,  
23 that was his normal meeting cycle.

1 Q. And did he receive money for this information?

2 A. Yes.

3 Q. How much money did he receive for the information, sir?

4 A. About \$7500 for that same time period.

5 Q. Sir, I'd now like to focus on your training and the

6 training you have received in the field of counterintelligence and

7 its subcomponent of counterespionage. What formal training have you

8 received to become a CI agent?

9 A. The Basic Agent Course is a 5-month course at Fort

10 Huachuca. I did that in 1984.

11 Q. Sir, is that similar to AIT?

12 A. At that time there was no AIT. You had to actually have

13 one assignment in the Army before you could transfer to a CI agent.

14 They wanted someone who wasn't as junior as an AIT would offer to be

15 a CI agent. That's changed several times throughout the years for

16 the Army, but at the time you had to be at least an E5.

17 Q. And, sir, what information did that course cover?

18 A. All of the fundamentals of counterintelligence, much like

19 the functions I had mentioned, investigations, operations, analysis

20 and production, functional services, collection.

21 Q. And, sir, what advanced counterintelligence training have

22 you received formally?

1           A.    Before the Defense Joint Counterintelligence Training  
2 Academy where I was the Chief of Training, the Army had an advanced  
3 course that was basically what that entity was, and it was specific  
4 advanced training in investigation, counterespionage investigations,  
5 offensive CI operations and surveillance.

6           Q.    And, sir, when did you receive that training?

7           A.    That would have been the end -- the beginning of 1992.

8           Q.    And, sir, throughout your career have you ever participated  
9 in any type of continuing education opportunities?

10          A.    That's basically how CI professionals continue to develop.  
11 There's, there's not a lot. Once you get the basic fundamentals of  
12 investigation, everything from there is experience, learning from  
13 things that continue to happen, lessons learned, case studies of  
14 subsequent investigations, so it's, I would say the education is  
15 continuous. There are yearly conferences where we discuss the big  
16 issues for DoD. Every time there's a significant investigation that  
17 is resolved within the CI community those are discussed, what did we  
18 learn, how did our foreign adversary conduct that investigation, what  
19 did we learn about them, how could we apply that to new  
20 investigations.

21          Q.    Sir, did any of your continuing education opportunities  
22 include getting training through symposiums of federal partners  
23 outside the DoD?

1       A.    Yes.  We did a lot of legal training with the Bureau and  
2 with the Federal Law Enforcement Training Center in Glynco, Georgia.  
3 Mostly with the Bureau it was basically most significant  
4 investigations within the U.S. are conducted jointly with the Bureau,  
5 it's how to best partner and move those investigations forward.

6       Q.    And, sir, over your nearly 30 year career in  
7 counterintelligence, have you ever trained others in the field of  
8 counterintelligence, counterespionage?

9       A.    Yes.  I was an instructor at the CI Training Courses from  
10 1993 until today, and then I had a little 3 plus years as Chief of  
11 Training where I was not only responsible for developing and updating  
12 to insure the training for CI professionals were meeting the mark and  
13 meeting the requirements, I also continued to instruct in all of the  
14 various courses at JCITA.

15       Q.    And what specific courses have you taught related to CINC?

16       A.    Investigative methodologies and the advanced training  
17 courses as well as in the intermediate and the junior courses.  Case  
18 studies for the specific -- the case officers who are going to run  
19 our office of CI operations.  You really can't separate the offensive  
20 CI from the investigations.  So I always give them the investigative  
21 perspective as they are trying to figure out how to learn to do a CI  
22 offensive -- learn how to do an offensive CI operation.

1 Q. And, sir, how often overall do you actually teach in the  
2 field of counterintelligence?

3 A. Now it's only about every quarter, two times every quarter.

4 Q. And, sir, who are the typical students that attend these  
5 courses?

6 A. They're either the advanced students getting the advanced  
7 investigative training or they're the basic students who are coming  
8 and getting basic investigative training.

9 Q. Sir, you've mentioned twice now you've served as Chief of  
10 Training at JCITA, what were your duties and responsibilities and  
11 duties as the Chief of Training at JCITA?

12 A. Other than managing the work force, it's working with all  
13 the CI executors, seeing what their training needs are, what are they  
14 seeing, what do they need their special agents to be able to do, and  
15 insure at one training location we're meeting the requirements of all  
16 of the DoD customers.

17 Q. Sir, what civilian education have you received?

18 A. I have a bachelor's of management from University of  
19 Maryland University College and a master's in interdisciplinary  
20 management.

21 Q. Sir, would you describe your experience of almost 30 years  
22 in counterintelligence intelligence as common for most CI  
23 professionals?

1 A. No.

2 Q. Why is it not common, sir?

3 A. All the time within the Army at the Army Foreign  
4 Counterintelligence Activity that was the one place where the Army  
5 would have a dedicated investigative element. There's a lot of  
6 investigations that are going around, but the ones that are deemed  
7 significant where you would need the trust in the individual that had  
8 the skills, since they were all done in one place, I was lucky that I  
9 had an opportunity to be in that organization for so long and only  
10 focus on the significant investigations that the Army had.

11 Q. Sir, in an unclassified manner, and how many CI  
12 professionals do you estimate there are within the Department of  
13 Defense?

14 A. A little over 3,000.

15 Q. And approximately how many people across the Department of  
16 Defense would you estimate have the same level of experience that you  
17 have in investigations operations?

18 A. Less than ten.

19 Q. Why is that, sir?

20 A. Well, I guess on the good side there's just not a  
21 significant amount of significant espionage investigations that are,  
22 that we have across the Department. Having seen all of them since  
23 the end of 2006, I have a pretty good idea of the folks that work



1 those, the lessons learned from those, and actually the ones that  
2 would be considered significant where they ended in arrest and just  
3 by luck of assignment, few people have the opportunity to work in a  
4 dedicated organization like I did.

5 Q. And, sir, you just said having seen since 2006. Could you  
6 please explain what do you mean?

7 A. As having visibility over all the significant  
8 investigations within DoD, and being an investigator at heart, I  
9 would have specific knowledge of all of the things that are running,  
10 how they're going, how they're going to end, are they going to be  
11 resolved, are they going to be able to be prosecuted, so I would have  
12 a very good idea of what's happening across all the DoD from an  
13 investigative standpoint from counterintelligence and  
14 counterterrorism.

15 Q. Sir, is there a requirement for you to have visibility over  
16 all of DOD counterintelligence investigation?

17 A. Yes. That division, there was a DoD directive and so all  
18 the CI entities within DoD have to report up all of their CI  
19 operations and all of their investigations into this one entity that  
20 I led.

21 Q. And, sir, you mentioned significant investigation.  
22 Approximately how many significant investigations occur each year  
23 across DoD?

1           A.    There's generally, in any given month there's between 150  
2 and 200. Those come and go, so 200 to 300 a year would actually pass  
3 my desk that I would have visibility over.

4           Q.    And, sir, how many significant investigations have you  
5 personally worked on as an agent in some capacity?

6           A.    Significant counterespionage investigations was about 40,  
7 and then there were seven others where I was the co-case agent,  
8 supportive agent of seven others that ended up with arrests and  
9 prosecutions.

10          Q.    And, sir, on average, what is a counterintelligence  
11 investigator, how many major significant cases do they see in their  
12 career?

13          A.    Within the Army in my time, only the folks that were  
14 assigned in the Foreign Counterintelligence Activity would ever have  
15 an opportunity to work those. And within DoD, NCIS has a similar  
16 capability, OSI does not, so there's just not a place where  
17 significant cases are worked by one group of people other than in the  
18 Army.

19          TC[MAJ FEIN]: One moment, please, sir.

20          MJ: Okay.

21          TC[MAJ FEIN]: Ma'am, at this point the United States would  
22 continue moving forward on laying the foundation for Mr. Lewis's  
23 expertise, but it would require a closed session based off of the

1 remaining questions, and pursuant to the Court's previous ruling,  
2 Appellate Exhibit 550. However, if the defense wants to cross-  
3 examine at this point and cross-examine also during the closed  
4 session, we could go there first.

5 MJ: Defense, how would you like to proceed?

6 ADC[MAJ HURLEY]: Ma'am, we would like to cross-examine in  
7 this session.

8 MJ: All right. Why don't we do open cross-examination and then  
9 proceed into the closed session?

10 TC[MAJ FEIN]: Yes, ma'am.

11 ADC[MAJ HURLEY]: Thank you, ma'am. Ma'am, may I begin?

12 MJ: Yes.

13 **CROSS-EXAMINATION**

14 **Questions by the assistant defense counsel [MAJ HURLEY]:**

15 Q. Mr. Lewis, I'd like to begin my examination of you with the  
16 same admonition that Major Fein did. Please stop me if I approach  
17 saying something that's classified, all right?

18 A. Okay.

19 Q. And just tell me directly if I ask you a question that  
20 calls for a classified response, all right?

21 A. Okay.

22 Q. I'm going to use the expression valuing a lot.

23 A. Okay.

1 Q. When I say that, I mean valuing an object for its monetary  
2 value.

3 A. Okay.

4 Q. Like if someone wanted to buy it.

5 A. Okay.

6 Q. Like a foreign intelligence service.

7 A. Okay.

8 Q. Like a foreign intelligence service from a person that had  
9 a classified document.

10 A. Okay.

11 Q. Do you understand the context of value?

12 A. Yes.

13 Q. Do you recall a conversation that we had on Friday?

14 A. I talked to you on Friday, yes.

15 Q. And you talked to me and Mr. Cassius Hall on Friday?

16 A. Okay.

17 Q. Do you recall that?

18 A. Yes.

19 Q. Do you remember telling me and Mr. Hall that you did not  
20 consider yourself an expert at valuing classified information when  
21 first contacted to be a witness in this case?

1           A.    I remember telling you, that you asked me what, could you  
2 provide me a document and I tell you what that document is worth. I  
3 did say no.

4           Q.    I'm just going to ask the question again, all right, Mr.  
5 Lewis?

6           A.    Yes.

7           Q.    Do you remember telling me and Mr. Hall that you did not  
8 consider yourself an expert at valuing classified information when  
9 first contacted to be a witness in this case?

10          A.    Yes.

11          Q.    Anything change over the weekend with respect to that  
12 opinion?

13          A.    No.

14          Q.    So you still don't think that you were an expert at valuing  
15 classified information when you were first contacted to be a witness  
16 in this case?

17          A.    No. I think what I said was when you asked me if you gave  
18 me a document, could I tell you how much that would be worth, and I  
19 cannot tell you how much that document would be worth.

20          Q.    Okay.

21          A.    I could tell you what a foreign adversary would pay for it.

1 Q. Do you remember telling me and Mr. Hall that you did not  
2 consider yourself an expert at valuing classified information at that  
3 time, that is to say, on Friday, the 28th of June, 2013?

4 A. In the way that I just explained it where you said you give  
5 me a document.

6 Q. Right.

7 A. Can you tell me what that's worth? Yes, I remember saying  
8 that.

9 Q. Right. What you remember saying is, yes, to that question,  
10 that you did not consider yourself an expert at valuing classified  
11 information at that time.

12 A. Yes.

13 Q. Thank you. Anything change over the weekend with respect  
14 to that?

15 A. No.

16 Q. Now, what I just heard Major Fein say is that they're going  
17 to offer you as an expert in counterintelligence.

18 A. Okay.

19 Q. Is that right?

20 A. Yes.

21 Q. And they're also going to offer you as an expert in valuing  
22 classified information for a foreign intelligence service, is that  
23 right?

1 A. Yes. Yes.

2 Q. Now, Major Fein told me about that on Friday.

3 A. Okay.

4 Q. Was that after a conversation that you had with Major Fein?

5 Did you indicate ----

6 A. I don't understand the question.

7 Q. On Friday did you speak with Major Fein?

8 A. Yes.

9 Q. Did you tell him that you would, instead of being referred

10 to as a value expert for classified information, instead of that, you

11 wanted to be known as a valuation expert for classified information

12 for a foreign intelligence service?

13 A. No.

14 Q. You didn't tell him that?

15 A. No.

16 Q. Mr. Lewis, ever taken any classes, civilian or military

17 classes in valuing classified information for a foreign intelligence

18 service?

19 A. Don't believe that course exists. No.

20 Q. It does not exist in the Department of Defense?

21 A. A course?

22 Q. Right.

23 A. No, sir.

1 Q. And certainly if it doesn't exist in the Department of  
2 Defense, it doesn't exist in the Department of the Army?

3 A. Not that I'm aware of.

4 Q. Because you've partnered so extensively with your federal  
5 law enforcement partners, are you aware of any class that discusses  
6 valuing classified information for a foreign intelligence services?

7 A. A class?

8 Q. A class.

9 A. No.

10 Q. Do you know of any person who holds himself or herself out  
11 as an expert in the field of valuing classified information for a  
12 foreign intelligence service?

13 A. I can't speak to that. There's a lot of people that have  
14 the same knowledge I have of knowing through their experiences what a  
15 foreign intelligence service would pay for it.

16 Q. You've been in counterintelligence for 29 years?

17 A. Yes, sir.

18 Q. Anyone hand you a card that indicated that they were an  
19 expert at valuing classified information for foreign intelligence  
20 services?

21 A. No.

22 Q. Receive a lot of business cards in your 29 years on this  
23 job?



1 A. Yes.

2 Q. Let's get back to your education. Ever taken any classes  
3 offered by a civilian company in valuing any information for a  
4 foreign intelligence service?

5 A. No.

6 Q. Ever take any classes offered by a civilian company in  
7 valuing information for anyone, period?

8 A. Restate the question.

9 Q. Sure. Ever take any classes offered by a civilian company  
10 for valuing any information?

11 A. No.

12 Q. Nothing in college?

13 A. Nope.

14 Q. Nothing in your master's program?

15 A. Nope.

16 Q. Ever receive any military instruction in valuing -- I think  
17 we've already covered that. Let me skip ahead. Did you ever receive  
18 any military instruction in valuing information for anyone, valuing  
19 any kind of information for any kind of?

20 A. No.

21 Q. That wasn't covered in your counterintelligence basic  
22 course?

23 A. No.

1 Q. Not in your advanced course?

2 A. No.

3 Q. Not in this joint program that you're talking about?

4 A. No.

5 Q. Not at FLETC?

6 A. No.

7 Q. Not at the Federal Bureau of Investigation?

8 A. No.

9 Q. It was never the subject of any training that you

10 personally gave?

11 A. Training, no.

12 Q. Never been covered ever in any military class that you've

13 received or taught in? We're talking about the value of classified

14 information for foreign intelligence services.

15 A. The information, we determine the value of information by

16 what we know through operations that they do and what we learn

17 through investigations, so there's no training per se, that's the

18 experience part of it.

19 Q. Right. And we'll talk about your experiences.

20 A. Okay.

21 Q. I'm still talking about training.

22 A. Training.

1 Q. Ever been covered ever in any class you've ever taken or  
2 taught?

3 A. Not in that way, no.

4 Q. The next questions apply to your professional experience in  
5 counterintelligence. The previous conditions about valuing for money  
6 for someone to buy it still apply, all right?

7 A. Uh-huh.

8 Q. Have you ever valued classified information -- have you  
9 ever done it in the first place, like -- let me restart this whole  
10 line of questioning, Mr. Lewis. There are two basic areas of  
11 counterintelligence, correct?

12 A. Like?

13 Q. There's the investigations side of counterintelligence?

14 A. Okay. There is -- Yes.

15 Q. And then there's the offensive side of counterintelligence?

16 A. Yeah. There's a couple others, but that's the two major I  
17 would say.

18 Q. Okay. Thank you. Ever held a job where all you did was  
19 offensive counterintelligence?

20 A. No.

21 Q. So you've never exercised the skill in the first place  
22 during the pendency of an investigation of valuing classified

1 information for a foreign intelligence service for the purpose of  
2 that investigation?

3 A. I couldn't think of how that would, no.

4 Q. So you've never done it?

5 A. Please restate that then.

6 Q. For sure.

7 MJ: I'm confused too a little bit.

8 ADC[MAJ HURLEY]: Ma'am, I apologize.

9 Q. You've never been an offensive counterintelligence agent?

10 A. As a case officer?

11 Q. Right.

12 A. For offensive counterintelligence?

13 Q. Right.

14 A. No.

15 Q. You never have?

16 A. No.

17 Q. And as I understand it, those offensive counterintelligence  
18 agents have cases?

19 A. Operations, yes.

20 Q. Right.

21 A. Yeah.

22 Q. And as a part of that, it may call on them to value  
23 classified information for a foreign intelligence service?

1 A. No.

2 Q. It would not call them to do it?

3 A. I wouldn't consider the case officer valuing the  
4 information, no. Normally the foreign service office values the  
5 information, they're the ones that determine the value to them.

6 Q. For want of a better word, Mr. Lewis, the bad guys do  
7 that, don't they?

8 A. Yes.

9 Q. Ever testified before?

10 A. As a fact witness, yes.

11 Q. So when you say as a fact witness, you mean you've never  
12 been accepted as an expert in counterintelligence by a court?

13 A. That is correct.

14 Q. And you've never been accepted as an expert in valuing  
15 classified information from a foreign intelligence service by any  
16 court?

17 A. That's correct.

18 Q. Do you subscribe to any journals that are dedicated to the  
19 valuing of classified information?

20 A. No.

21 Q. Do you know if any exist?

22 A. I do not know if any exist.

1 Q. Do you subscribe to any journals that are dedicated to the  
2 valuing of information period?

3 A. Not DoD classified information.

4 Q. Go to any conferences that are dedicated to the valuing of  
5 classified information?

6 A. Not specifically addressed that way, no.

7 Q. Ever seen a valuation expert, and this is any way, have you  
8 ever seen any valuation expert give a presentation of any sort?

9 A. U.S. expert?

10 Q. Yeah, U.S. expert.

11 A. No.

12 Q. Let's step away from value for a second. To solve  
13 problems, Mr. Lewis, professionals employ methods, right?

14 A. Yes.

15 Q. Would you agree with that concept?

16 A. Yes.

17 Q. And professionals can disagree about the reasonableness of  
18 those methods, would you also agree with that, in your personal  
19 experience?

20 A. Yes.

21 Q. Okay. Let's go back to value now. Do you know what methods  
22 a valuation expert would use to come to his or her conclusions

1 regarding value? How would they value the information? Do you know  
2 what methods they use?

3 A. Who is they?

4 Q. I'm sorry. Let's talk about experts at valuing classified  
5 information for foreign intelligence services.

6 A. U.S. experts?

7 Q. Right. That's what I'm talking about.

8 A. All right.

9 Q. Do you know what methods that those individuals might use  
10 to determine value?

11 A. Yes.

12 Q. Do you have any way of grading whether or not those methods  
13 are reasonable? Do you know if those are reasonable or not?

14 A. I guess it depends on what they base it on.

15 Q. It may be unreasonable?

16 A. Could be reasonable.

17 Q. Yeah. Could be reasonable too, but it also may be  
18 unreasonable?

19 A. I'd have to know what they're basing it on before I could  
20 decide that.

21 Q. Have you ever heard the expression a thief's market?

22 A. I think when you asked me that it was no, and it's still  
23 no.

1 Q. All right. Mr. Lewis, this is not the first time we've  
2 met, is it?

3 A. No.

4 Q. We met in your office once?

5 A. We did.

6 Q. And that was in December of 2012?

7 A. I'll believe you on that. I don't remember -- I remember a  
8 meeting in my office. I wouldn't remember it was December.

9 Q. I was there and Mr. Hall was there as well?

10 A. I remember him as well.

11 Q. Do you remember telling me about your experience as an  
12 investigator?

13 A. Not specifically, no.

14 Q. Let me rephrase that question. Do you have any independent  
15 memories of the conversation that we had at all?

16 A. Not really.

17 Q. We had a subsequent conversation in May of 2013?

18 A. Yes.

19 Q. And that was at Mr. Cassius Hall's office?

20 A. Yes.

21 Q. And that was in May of 2013?

22 A. I think I just changed jobs, yeah.

23 Q. So would that have put it in about May of 2013?



1           A.    I believe so, yes.

2           Q.    Do you remember telling me at this second interview that

3   there was no price list for classified documents?

4           A.    No.

5           Q.    Do you remember telling me that there was no way, to use

6   your words, to value a document that you had been handed?

7           A.    In the scenario that you painted where you give me a

8   document, I tell you how much it's worth; I remember that

9   conversation.   And the answer was no.

10          Q.    We also talked on Thursday of last week; do you recall the

11   substance of that conversation?

12          A.    Some.   It was a lot of, a lot going on last week.

13          Q.    Do you remember telling me that you've never managed

14   offensive counterintelligence operations?

15          A.    I do remember that.

16          Q.    Not one case?

17          A.    One operation.

18          Q.    You haven't managed one operation?

19          A.    No.

20          Q.    For one day?

21          A.    No.

22          Q.    And you remember -- or do you remember telling me and Mr.

1 Hall on Thursday of last week, and I quote, "the adversary values the  
2 info"?

3 A. We did talk about that, yes.

4 ADC[MAJ HURLEY]: Ma'am, if I may have a second.

5 MJ: Yes.

6 ADC[MAJ HURLEY]: Ma'am, we have an offer of proof that we  
7 would like to make once we move into closed session.

8 MJ: That's fine. Any redirect in open session?

9 TC[MAJ FEIN]: No, ma'am.

10 MJ: All right. Is there anything else we need to address in  
11 open session before we close the Court for the classified portion of  
12 this witness's testimony?

13 TC[MAJ FEIN]: No, ma'am. The United States offers for way of  
14 administration and we move forward, and if after the parties litigate  
15 the Court does qualify Mr. Lewis or accepts him as an expert, that  
16 the United States would then elicit his testimony in a closed  
17 session, and then also elicit his testimony in an open session to  
18 summarize that.

19 MJ: All right. So the closed session to determine the  
20 expertise issue, then depending on the Court's ruling on that should  
21 there be any further testimony by the government, that would also be  
22 in closed session followed by the open session testimony, is that  
23 what I'm understanding?

1 TC[MAJ FEIN]: With a recess in between, yes, ma'am.

2 MJ: Defense?

3 ADC[MAJ HURLEY]: Yes, ma'am. We have no problem with that

4 course of action.

5 MJ: Is there anything else we need to address? I do want some

6 estimate of time so I can tell the public and the press when we

7 approximate coming back.

8 TC[MAJ FEIN]: May we have a moment, Your Honor?

9 MJ: Yes. As you're having your moment, understanding that this

10 is an approximation.

11 TC[MAJ FEIN]: Ma'am, the United States estimates two hours

12 between opening, closing and any litigation on his expertise.

13 MJ: All right. So we would be then coming back into open

14 session approximately 1630, or do you want to say 1700?

15 TC[MAJ FEIN]: 1630, ma'am.

16 MJ: Defense agree with that?

17 ADC[MAJ HURLEY]: Yes, ma'am.

18 MJ: So what we're going to do now is we are going to recess the

19 open portion of the court and then proceed into closed session. The

20 parties have advised the Court that we'll approximately be going back

21 into open session at 1630. Should we go beyond that, I'll try to

22 advise the bailiffs to advise the press and the public that that

1 schedule may change by a half an hour or an hour, whatever it happens  
2 to change to. Is that acceptable to the parties?

3 TC[MAJ FEIN]: Yes, ma'am.

4 CDC[MR. COOMBS]: Yes, ma'am.

5 MJ: All right. Is there anything else we need to address  
6 before we recess the court?

7 TC[MAJ FEIN]: No, ma'am.

8 [The witness was temporarily excused, duly warned, and withdrew from  
9 the courtroom.]

10 MJ: Court is in recess.

11 [The court-martial recessed at 1422, 1 July 2013.]

12 [END OF PAGE]

Pages 9510 through 9656 of this transcript are classified “SECRET”. This session (1 July 2013, Session 1) is sealed for Reasons 2 and 3, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

Pursuant to AE 550, the unclassified and redacted version follows.

1 [The court-martial was called to order at 1453, 1 July 2013.]

2 MJ: Court is called to order. Let the record reflect--  
3 well, Major Fein, go through to see who is here and the witness  
4 is on the witness stand.

5 This is a closed session.

6 TC[MAJ FEIN]: Yes, ma'am. This session is classified at  
7 the SECRET/NOFORN level. All parties when the Court last  
8 recessed are again present. Sergeant Coates, the Court's  
9 paralegal is present. The members of the prosecution team,  
10 including the security experts and members of the defense team,  
11 including the security experts are in the gallery along with  
12 security, Your Honor. Prior to the start of this session, the  
13 Court Security Officer completed his checklist and that will be  
14 filed in the post trial allied papers.

15 MJ: All right. Before we begin, and I'll announce this  
16 again in the open session, the Court has completed its review  
17 and I haven't formally authenticated it yet, but I completed the  
18 review of the session of the closed transcript--the closed  
19 hearing with Special Agent Shaver on the 26th of June 2013. So  
20 I am handing it back to the court reporter. That session is  
21 ready to go to the next phase, the classification review of the  
22 expedited transcript.

23 Any other issues with that?

24 TC[MAJ FEIN]: No, ma'am.

1 MJ: Okay.

2 CDC[MR. COOMBS]: No, ma'am.

3 MJ: Is there anything else we need to address before we

4 proceed?

5 TC[MAJ FEIN]: No, ma'am.

6 CDC[MR. COOMBS]: No, ma'am.

7 MJ: All right. Major Fein?

8 **DANNY LEWIS, civilian, seated at the witness stand, was reminded**

9 **of his previous oath, and testified as follows:**

10 **REDIRECT EXAMINATION**

11 **Questions by the trial counsel[MAJ FEIN]:**

12 Q. Sir, earlier you testified about five CI functions.

13 I'd like you now to focus on two of the functions; first,

14 investigations. What are examples of investigations?

15 A. CI investigations?

16 Q. Yes.

17 A. They go--run the range of everything from allegations

18 of espionage down to failed polygraphs, classified information

19 being mishandled, other types of reports of activity of people

20 who have a security clearance that are still being looked at

21 from a security standpoint, as well.

22 Q. And sir, over your career how have you been involved

23 in counterintelligence investigations?

1           A.    When I was in the 527th, that is where we basically  
2 handled everything that come into the office. So it was--if it  
3 was a report of someone who had made a suspicious activity  
4 report we would follow up on that and conduct that investigative  
5 activity. We did all of the background investigations of all of  
6 the military folks who were in the military community where I  
7 was responsible for. We did all of their background  
8 investigations. At that time the Defense Security Service--the  
9 Defense Investigative Service, basically, had the military did  
10 all of the background investigations overseas. From there and  
11 that was just a lot of interviews of everyday CI activities.  
12 After that when I got to           we specialized in the significant  
13 espionage investigations that the Army determined were based on  
14 the allegation or the reporting--most likely, espionage was  
15 happening and we had to resolve that.

16           Q.    And sir, how did the exchange of money for government  
17 information play a role in these investigations?

18           A.    Money is one of the two things that we look for the  
19 most. Normally, most foreign intelligence organizations pay for  
20 classified information. So if an individual that--there is an  
21 allegation that he or she is committing espionage or has  
22 committed espionage, we would spend a lot of our time focused on  
23 the background of the finances of that individual looking for  
24 those unexplained affluence, the anomalies that fit on the



1 financial side to possibly prove that someone had been involved  
2 in espionage.

3 Q. And sir, could you explain, please for the Court,  
4 specifically what it was that you investigate in terms of money  
5 changing hands?

6 A. I am not sure I understand the question.

7 Q. Yes, sir. You just testified in general how money  
8 plays a role. And, what was your role? What were you using or  
9 how did money come up in your purview as an investigator?

10 A. As far as conducting analysis of financial records,  
11 both credit card records, bank records, anything that had to do  
12 with the individual; all of those were laid out and we conducted  
13 a financial analysis. What was the normal pattern of spending  
14 for an individual and his or her family; and then we would look  
15 for the patterns that did not fit the normal that we had  
16 determined based on that individual.

17 Q. So in your time, sir, at the 527th and then as a  
18 military and civilian member of how often did the exchange  
19 of money come up in these types of cases?

20 A. Just about always. 95 percent of the time, I would  
21 say.

22 Q. And sir, what type of foreign intelligence services  
23 were involved with these types of investigations?

1 A. The ones that I had experience with, my experience was

2

3 so I'll

4 throw all those in. But, all

5 Q. And sir, what was the classification of the different

6 types of government information that exchanged hands for money?

7 A. Top Secret, Secret, Confidential, Unclass sometimes as  
8 well.

9 Q. What position--sir, in that position you held up until  
10 last month, what was your role regarding investigations?

11 A. Visibility over all of the investigations that were  
12 being conducted in every entity with DoD with the military  
13 services, the Defense Agencies, and the with those cases  
14 that involved DoD. My role was to make sure I would review  
15 those and see how they were going and as things became  
16 significant there, something where there was going to be an  
17 arrest, there was a media exposure,  
18 , or overseas. Those are the things  
19 that I would review and ensure that we made part of the monthly  
20 briefing up to the USDI.

21 Q. Sir, what do you mean by visibility--that you had  
22 visibility of?

23 A. Well, all of the DoD entities reported in to my  
24 office. So part of the monthly briefing was to ensure--review

1 those activities. What was happening in any of these--these are  
2 a month to month snapshots in ongoing investigations and ongoing  
3 operations.

4 Q. Sir, was it a regulatory requirement for all of these  
5 counterintelligence entities to report to your shop?

6 A. Yes.

7 Q. What requirement did that come from?

8 A. It's the DoD Instruction 5240.2. It's the CI  
9 activities and it lays out in detail the types of investigations  
10 that were reported.

11 Q. And sir, why was it your responsibility to oversee  
12 this?

13 A. I was responsible for ensuring that the Under  
14 Secretary of Defense for Intelligence and the Deputy  
15 Undersecretary had visibility on the things that were issues  
16 within their counterparts--service secretaries. If something  
17 had to go to Congress--if there was an issue overseas. My  
18 responsibility was to make sure that as the Under Secretary of  
19 Defense for Intelligence, he had equal knowledge of those  
20 issues.

21 Q. And sir, over how many significant investigations do  
22 you estimate that you have had personal visibility while at DIA?

23 A.

1 Q.

2

3 A.

4 Q. Sir, how did your experience in your previous job at  
5 DIA differ from your previous roles as a CI Agent?

6 A. As a CI Agent I was more focused specifically on Army  
7 equities. So my visibility was what was happening within the  
8 Army with the specific investigations that I was the case agent  
9 on or were assisting other case agents on.

10 Q. Sir, now I'd like to focus your attention on the fifth  
11 CI function you mentioned which is operations. What are  
12 examples of CI operations?

13 A. Offensive CI Operations

14

15 Q. And sir,

16 A.

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Q. And sir, what do you mean by

A. Those are all--those are

Q. Sir,

A. It depends on the requirement.

Q. Sir, is it accurate to say that

1 A. It is focused on

2

3 Q. Sir, what is the purpose of counterintelligence  
4 operations?

5 A. The

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Q. What is someone

A.

Q. Are you

A. I am.

Q. Have you

A. I have.

Q. Was that your primary----

A. In----

Q. I am sorry. Go ahead, sir.

A. ----in the investigative side of being

Q. Sure, sir. And what was your primary specialty?

A. Counterespionage investigations.

Q. So not necessarily

A.

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Q. Sir, does your work involve using the same skills

A. Yes.

Q. Why?

A. From the investigative side we use

Q. Sir, earlier you mentioned that you've helped  
Could you briefly explain for the Court  
what



1 A.

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9 Q.

10 A.

11 Q.

12 A. In an investigation, that is one of the elements of  
13 espionage. It's providing defense information to a foreign  
14 national. So we're--from the investigative side that is what we  
15 need to know. We need to know what was compromised by that  
16 person who committed espionage so we can go back and determine  
17 what is the damage; what is the long-term damage to DoD. So  
18 that is what we are trying to focus in, is what did you provide.

19

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1 Q.

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4 A. Yes.

5 Q. And sir, what did you mean just now--earlier when you  
6 said,

7 What do you mean by that?

8 A.

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Q. And sir, have you worked directly with case officers?

A. All of the time. Yes.

Q. And could you explain for the Court how you directly work with case officers?

A. From the standpoint of when I was in the Army, as I stated before, we were in the same group. If the actually created an organization which would support that where you have the case officer and the investigators

In my role as the Chief of the Counterespionage Division, as individual operations were identified to be briefed to the Under Secretary of Defense, it was almost monthly I would reach out to the field, to the case officers through the Headquarters if I had specific questions or I needed information to round out my briefing to the USDI. Everything doesn't always make it into the report. If it is significant enough for the USDI it was significant enough for me to reach out and make sure I had the nuance there that was really significant.

Q. Sir, how many years have you had direct oversight of offensive counterintelligence operations?

1 A. Almost 7 years. Well, until this past May. Not  
2 anymore.

3 Q. Sir, over the course of your career how many offensive  
4 CI operations have you been involved with or had visibility  
5 over?

6 A.

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10 Q. Sir, what do you mean by--very briefly, what do you  
11 mean by

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13 A.

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21 Q. And sir, did you have a requirement to report those  
22 types of operations higher?

23 A. If--yes. If it was--why it was failed was deemed to  
24 be significant by the executor of that operation,

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11 Q. Sir, when you said "we" what is your role in the "we"  
12 for your organization?

13 A. My role was to ensure that the  
14  
15  
16

17 So as the DOD entity sitting  
18 atop all of those stove pipes, it was my responsibility to make  
19 that

20 Q. Sir, now I would like to focus your attention on the  
21 foreign intelligence services that you've been briefly speaking  
22 about and your knowledge about them. What kind of information  
23 is generally sought by foreign adversaries through their  
24 intelligence services?

1 A.

2

3

4 Q. Is it limited just to classified information, sir?

5 A. Mostly. If it is unclass, they normally--there is a  
6 lot of other types of ways that a foreign entity will collect  
7 information. But there are times--if it's an FOUO document  
8 something specific that is handled compartmentalized or it just  
9 hasn't made it to the media, it can be unclassified. Yes.

10 Q. And sir, in your experience, how do foreign  
11 intelligence services attempt to acquire U.S. Government  
12 information?

13 A. They look for people within the government who would  
14 be willing to compromise that information to them.

15 Q.

16

17 A.

18 Q.

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20 A.

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1 Q. Is the only one you can think of off hand, sir?

2 A.

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4 Q.

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8 A. Yes.

9 Q. And what about classified, sir?

10 A. Yes.

11 Q. How do you know that?

12 A. That is one of the primary things we get

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18 Q.

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20 A.

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22 Q. Who is "they"?

23 A. The foreign intelligence service.

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Q.

A. I am not sure I understand that question.

Q. Yes, sir. I'll move on, sir. Sir, how many quarters-  
-you mentioned earlier that you provide a report to Congress on  
these types of operations?

A. Yes.

Q. How often did you provide that report?

A. Every quarter since December of 2006. So that is  
about 27 quarterly reports that I was responsible for getting to  
Congress on time and accurate.

Q. Sir, what was your actual role in those reports?

A. The actual military executors of the operations report  
that information--reported that information into my office and I  
was the one that would sign off on that, that the information in  
there is accurate and it fits what we've seen as we see all of  
the operational activity that was ongoing.

Q. Sir, throughout all the training you received or  
given, what was taught about the role of money in  
counterintelligence investigations





1 information, which is something the U.S. Government would really

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6 Q.

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8 A.

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12 Q.

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14 A. Yes.

15 Q. Could you explain, sir?

16 A.

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4 Q. How do you know that, sir?  
5 A.  
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10 Q. Sir, the office that you were in or you were the----  
11 A. That I was in charge of before I left for my new job.  
12 Q. Yes, sir. Sir, do foreign intelligence services pay  
13 for unclassified information?  
14 A. They do.  
15 Q. And how do you know that?  
16 A. I had a couple of cases,  
17  
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20 Q. And sir,  
21  
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23 A.  
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Q. Sir, is there a open and free market to sell and buy  
U.S. Government information?

A. No.

Q. Is there like an Amazon or Wal-Mart to sell government  
information?

A. No.

Q. Sir, to the best of your knowledge and experience is  
there an illegal buyer's market that foreign intelligence  
services use to buy government information?

A. I would say that is the methodology most professional  
intelligence organizations--they are looking to stealing it, and  
they are trying to get from someone who is inside and can get  
their hands on it.

1 Q.

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4 A.

5 Q.

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7 A.

8 Q.

9 A.

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13 Q.

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15 ADC[MAJ HURLEY]: Objection, Your Honor.

16 MJ: Yes?

17 ADC[MAJ HURLEY]: Hearsay. He is not qualified as an

18 expert yet, ma'am.

19 MJ: Overruled. Go ahead. He is developing a foundation;

20 that is what I am considering it for at this point. Go ahead.

21 ADC[MAJ HURLEY]: Yes, ma'am.

22 [Examination of the witness continued.]

23 Q. Sir, I will ask the question again. In general, based

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A.

Q.           sir. And sir, with           , was that with

A. Yes.

Q. And sir, what factors go into you assessing the cost  
of the information that

A. I am not sure I understand the question.

Q. Sir, what factors are you considering when assessing  
the

A.

1 Q.

2 A.

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1 Q.

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11 Q. So, sir, speaking of

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14 A.

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16 Q.

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18 A.

19 Q.

20 A.

21 Q.

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1 Q.

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9 Q. Sir, does that include--you used the term "tippy-top  
10 secret" information or is----

11 A. That was probably a bad word.

12 Q. Yes, sir. So--well, not a bad word, sir but----

13 A. Top Secret.

14 Q. ----does that include Top Secret or is that for Secret  
15 and below?

16 A.

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19 Q.

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22 A.

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Q.

A.

Q. Sir, why does the United States Government keep sensitive unclassified and classified information outside of the hands of foreign intelligence services?

A. We have a whole classification system that we try to use to protect our information from getting into the wrong hands.

Q. And, what entity--when you said "we" what entity owns that type of information?

A. The U.S. Government.

Q. I am sorry. Is that your answer, or were you asking a question?

A. The U.S. Government.

1 Q. Okay, sir.

2 A. That was phrase as--my apologies.

3 Q. No. I am sorry, sir. Sir, do you consider yourself  
4 an expert in valuing what foreign intelligence services pay for  
5 types of U.S. Government information?

6 A. Based on the visibility that I have  
7 , I would say yes.

8 Q.

9 A.

10 Q.

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12 A.

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22 TC[MAJ FEIN]: Your Honor, at this time the United States  
23 offers Mr. Lewis as an expert in counterintelligence and the

1 value of government information to foreign intelligence  
2 services.

3 ADC[MAJ HURLEY]: Ma'am the defense objects; inadequate  
4 foundation.

5 MJ: Hold on, just a minute. In valuing?

6 TC[MAJ FEIN]: Ma'am, in the value of U.S. Government  
7 information to foreign intelligence services. Just to note,  
8 ma'am, not in classified information. It is government, U.S.  
9 Government information.

10 MJ: All right. Defense, do you want to continue to voir  
11 dire this witness? I am going to defer a ruling at this time,  
12 pending your voir dire.

13 ADC[MAJ HURLEY]: Yes, ma'am. We would like to continue  
14 voir dire of this witness.

15 MJ: All right. Do you object to both an expert in  
16 counterintelligence; do you object to that one?

17 ADC[MAJ HURLEY]: Yes, ma'am.

18 MJ: All right.

19 MJ: I'll let you voir dire, but what is the inadequate  
20 foundation?

21 ADC[MAJ HURLEY]: Ma'am, what I would say is I would just  
22 offer--do an offer of proof real quick with respect to that.

23 MJ: Yes. That is fine.

1 ADC[MAJ HURLEY]: All right, ma'am. With regard to his  
2 expertise in counterintelligence, generally, the defense would  
3 object to Mr. Lewis' testimony as either being the product of  
4 hearsay; things he has read, he is just coming in and dumping in  
5 front of this Court that he is not going to offer an opinion on,  
6 he is just going to say, "Here is the information that I have  
7 read."

8 MJ: Well, this is a foundation for that expertise. What  
9 he is going to testify before the Court as a fact finder has not  
10 come out yet.

11 ADC[MAJ HURLEY]: Yes, ma'am.

12 MJ: So, we are looking right now--do you object to his  
13 expertise as--in counterintelligence?

14 ADC[MAJ HURLEY]: Ma'am, I guess, what I would like to do  
15 is to do is the voir dire first--our voir dire for valuation and  
16 then after that is over, we will----

17 MJ: All right, just recognize there is two distinct things  
18 here; counterintelligence and evaluation

19 ADC[MAJ HURLEY]: Absolutely, ma'am. Absolutely, we  
20 understand that distinction.

21 MJ: Okay.

22

**RECROSS-EXAMINATION**

2 **Questions by the assistant defense counsel[MAJ HURLEY]:**

3 Q. Good afternoon, again, Mr. Lewis.

4 A. Good afternoon.

5 Q. Now we are going to talk about your knowledge of  
6 offensive counterintelligence operations, actual operations. Do  
7 you understand?

8 A. I understand.

9 Q. Everything you know about offensive, actual offensive  
10 counterintelligence operations, you know because you've either  
11 read it or have been told it. Is that correct?

12 A. No.

13 Q. Well what do you know about offensive  
14 counterintelligence that you have not been read--or haven't been  
15 told?

16 A. When I was in the Army, as an investigator we  
17  
18  
19  
20

21 Q. My mistake then, Mr. Lewis. At that point, I guess  
22 you were reading information about offensive counterintelligence  
23 operations, is that correct?

1 A. No. I am being told by the who is  
2 running the operation the things that is happening in his  
3 investigation.

4 Q. Okay. So let me restate my question then, Mr. Lewis.

5 A. Okay.

6 Q. And we will just go--what we'll do is we will break  
7 out your experience in two phases.

8 A. Okay.

9 Q. If that's all right.

10 A. Okay.

11 Q. First the investigatory phase?

12 A. Okay.

13 Q. And then the oversight phase?

14 A. Okay.

15 Q. In the investigatory phase----

16 A. Mm-hmm[indicating an affirmative response].

17 Q. ----everything you knew about actual offensive  
18 counterintelligence operations, you knew either because you had  
19 been told--you knew those things because you had been told those  
20 things, is that correct?

21 A. Yes.

22 Q. Or you----

23 A. Well--go ahead.

24 Q. Let me restate my question.

1 A. All right.

2 Q. Everything you knew, and this is the investigatory  
3 phase of your career----

4 A. Okay.

5 Q. ----everything that you knew, you knew because you had  
6 been told. Is that correct?

7 A. No. I don't agree with that. Experience comes from  
8 all different types of activities that you are witnessing going  
9 on. If you are sitting there and you are dealing with the

10  
11 people  
12 that know everything that is going on. So I don't understand.

13 Q. But he told you the information.

14 A. I am not the

15 MJ: Major Hurley, I am going to stop just for a minute  
16 here. He has testified on the direct examination from the  
17 government that he was involved with investigations; he was  
18 planning on--

19 . I am getting--you are pinning  
20 him down to something that he is trying to not respond that way.

21 ADC[MAJ HURLEY]: Sure.

22 MJ: Let him respond and don't put him in a box he doesn't  
23 want to be in.

24 ADC[MAJ HURLEY]: I won't, Your Honor.



1 MJ: All right.

2 [Examination of the witness continued.]

3 Q. Mr. Lewis, were you ever

4 A. I was never

5 Q. Were you ever an offensive counterintelligence

6

7 A. No;

8 Q. I apologize, sir.

9 A. No, I think we--I have clearly--I've never even

10 intimated that I was

11 Q. So your actual knowledge of these things comes from

12 what you've been told?

13 A. I wouldn't characterize it that way. I've experienced

14 it. If you are sitting there in the middle of the operation and

15 you are getting ready--

16

17

18

19

20 That was not my role.

21 Q. Right. And you were not

22 A. I was not.

23 Q. Thanks, Mr. Lewis. Let's try this with respect to

24 your experience in oversight.

1 A. Okay.

2 Q. Everything that you learned in the oversight phase in  
3 your career about actual offensive counterintelligence  
4 operations, you learned from what you've read in those files.  
5 Is that correct?

6 A. I would say mostly; mostly. Because there were--I did  
7 interact with the military executors of that operation if there  
8 were things that were deemed critical that I wanted to ensure  
9 the USDI was aware; there would be that direct contact. But you  
10 are right. What allowed me to be in that position is the  
11 experience I had that would be able to identify what was going  
12 to be significant in that operation. But again, no, I did not  
13 run the operation.

14 Q. Right. So let's go with, let's focus on that phase  
15 some more.

16 A. Okay.

17 Q. The oversight phase.

18 A. Okay.

19 Q. You would--you said there were

20 ?

21 A. Yeah. I would--yes.

22 Q. Is that an accurate estimate?

23 A.

24

1 Q. Somewhere in that range?

2 A.

3  
4 Q. Good. So you--in order to understand what was going  
5 on----

6 A. Yes.

7 Q. ----you read the agent reports about any particular  
8 investigation?

9 A. If it was an operation that I was going to brief. I  
10 didn't read . If an operation is  
11 going I had a pretty good idea of what was  
12 happening in that. If it was something that was new, maybe not  
13 much--as much knowledge of that.

14 Q. So of those significant cases, what you would review  
15 was a report from the agent?

16 A. The reporting from the field, yes.

17 Q. You didn't

18

19 A. Nope.

20 Q. You didn't

21 A. Nope.

22 Q. You didn't

23 A. Not per--not per--no.

24 Q. You----

1 A. Not--you mean  
2 Q. Right.  
3 A. No. Those don't exist.  
4 Q. In your investigatory experience you've  
5  
6 A. Absolutely.  
7 Q. But you never  
8 A. You mean from the----  
9 Q.  
10  
11 A. You mean in a--you talking about from the operations  
12 standpoint?  
13 Q. Right.  
14 A. Yeah.  
15  
16 Q. Now, with respect to the information that you have  
17 been told about--and this is--we are still in the oversight  
18 phase of your career.  
19 A. Okay.  
20 Q. You  
21  
22  
23 A. No.

1 Q. You would only talk to that individual to further  
2 develop your understanding for your briefing responsibilities?

3 A. Right. But the case officer wasn't responsible for  
4 that either, okay. In that case, the case officer is responsible  
5 for--the U.S. part of this----

6 Q. Right.

7 A. ----is responsible for trying to guide so we can learn  
8 as much of that possible.

9

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14 Q. Right.

15 A. ----where we understand, where we know what is going  
16 on in

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21 We verify that at every stage of the game. That is the

22

23 true.

1 Q. Sure. So just to make sure I understand, you never  
2 pushed that--the individual whose report you are reading----

3 A. Right.

4 Q. ----you

5 A. What

6 Q. That is what you would do?

7 A. No, no, no. No, no, no.

8 Q. You wouldn't do that either?

9 A. What I am saying is no--none of us did that.

10 Q. Right. You certainly didn't say,

11 A. No.

12 Q. Or,

13 A. No. Absolutely not.

14 Q. And you never independently verified the truth of the  
15 facts that you were being told in these reports?

16 A. Well that is the foundation of the whole security  
17 system is trust.

18 Q. Sure.

19 A. So if an  
20  
21

22 Q. So that----

23 A. That is a written report that is signed by a special  
24 agent. To me that means that is true. If a case officer is a

1   credentialed CI Agent and they are putting that name to that, I  
2   take that as a true statement until I've seen otherwise.

3       Q.    So again, just for my understanding----

4       A.    Okay.

5       Q.    You never independently verified the facts in the  
6   reports that you've read?

7       A.    I would have no                   reason to do that.

8       Q.    So, no?

9       A.    No. Trust.

10      Q.    Let's talk about your preparation for this case. In  
11   January of 2013----

12      A.    Um-hmm [indicating an affirmative response].

13      Q.    ----you tasked a--one second, sir. I just want to  
14   make sure that I get this name right.

15      MJ:   Is it in January of 2013?

16      ADC[MAJ HURLEY]: Yes, ma'am. I am more into--down in my  
17   notes.

18   [Recross-Examination of the witness continued.]

19      Q.    In January of 2013 you tasked                   is  
20   that correct?

21      A.    I----

22      Q.    You asked her to do something?

23      A.    ----I asked her to do something.

24      Q.    You asked her to pull an EEI?

## INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

**USE OF FORM** - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

**COPIES** - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

**ARRANGEMENT** - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.
8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).
9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).
10. Congressional inquiries and replies, if any.
11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.
12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.
13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).
14. Records of former trials.
15. Record of trial in the following order:
  - a. Errata sheet, if any.
  - b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
  - c. Record of proceedings in court, including Article 39(a) sessions, if any.
  - d. Authentication sheet, followed by certificate of correction, if any.
  - e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
  - f. Exhibits admitted in evidence.
  - g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
  - h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.